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STATE OF MONTANA

THE REVISED CODES OF MONTANA OF 1935

CONTAINING THE PERMANENT LAWS OF THE STATE IN
FORCE AT THE CLOSE OF THE TWENTY-FOURTH
LEGISLATIVE ASSEMBLY OF 1935

IN FIVE VOLUMES

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VOLUME TWO POLITICAL CODE (SECTIONS 2444-5668.44)

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VOLUME TWO

POLITICAL CODE

(MONTANAS 211 500-41)

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POLITICAL CODE

CHAPTER 230

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the governor from a list of not less than ten names submitted therefor by the Montana medical association.

History: Ap. p. Sec. 1, Ch. 110, L. 1907; re-en. Sec. 1474, Rev. C. 1907; en. Sec. 1, Ch. 157, L. 1919; re-en. Sec. 2444, R. C. M. 1921. Cal. Pol. C. Sec. 2978.

References

Cited or applied as sec. 1474, revised codes, before amendment, in *City of Miles City v. State Board of Health*, 39 M 405, 413, 102 P 696.

2445. Appointment, qualifications, terms of office of members—vacancies. The governor shall, within thirty days after the passage and approval of this act, appoint five members, who shall possess the qualifications specified in section 2444, to constitute the members of said board. Said members shall be so classified by the governor that the term of office of one shall expire in one year, one in two years, one in three years, one in four years, and one in five years. Annually thereafter the governor shall appoint one member, who shall possess the qualifications specified in the preceding section, from a list of not less than five names submitted by the Montana medical association, to serve for a period of five years. All vacancies in said board caused by death or otherwise shall be filled by appointment by the governor from a list of not less than five names submitted by said Montana medical association.

History: En. Sec. 2, Ch. 157, L. 1919; re-en. Sec. 2445, R. C. M. 1921.

2446. Secretary—election, qualifications, and salary. At the first meeting of the state board of health, or as soon thereafter as a suitable and competent person can be secured, the board shall elect a secretary, who shall be an educated physician, experienced in sanitary science and qualified to practice medicine in the state of Montana, who by virtue of such election shall be the executive officer and the state health officer. The secretary so elected shall receive in monthly payments an annual salary of five thousand dollars, to be paid out of the general fund of the state. The board may elect one of its own number secretary, in which case the governor shall appoint another member to complete the full number of the said board.

History: En. Sec. 3, Ch. 157, L. 1919; re-en. Sec. 2446, R. C. M. 1921. Cal. Pol. C. Sec. 2982.

2447. Duties of secretary. The secretary shall hold office for four years, but he may be removed for cause at any duly organized meeting of the board upon a majority vote of the members present; he shall perform all the duties required by law or by the rules and regulations of the board; he shall keep a record of the transactions of the board, and shall have custody of the books, records, documents, and other property belonging to the board; he shall, as far as practicable, communicate with other state boards of health and with local and county boards of health within the state; he shall keep on file all reports received from such local and county boards of health, and all correspondence of the office appertaining to the business of the board. He shall prepare blank forms of return and such instructions as shall be necessary, and forward them to the local and county boards of health throughout the state; he shall supervise the work of all local and county health officers, and when any local or county health officer shall fail to properly perform the duties required of him, the secretary of the state board of health shall notify such local or county board of health, and he may file complaint against such delinquent health officer

with a justice of the peace, as the exigencies of the case may demand; he shall inspect the records of each local and county health officer at least once in each year; he shall, whenever requested by any local or county health officer, or when he may deem it necessary, visit any district to investigate the cause of any existing disease or sanitary condition; he shall, through an annual report, and otherwise, as the board may direct, disseminate such information as he may collect, and general instructions regarding sanitary measures and means of preventing the spread of communicable diseases.

History: En. Sec. 6, Ch. 110, L. 1907; re-en. Sec. 1479, Rev. C. 1907; re-en. Sec. 2447, R. C. M. 1921.

NOTE.—The latter portion of the original section was omitted by the code commissioner of 1921 to conform to later enactments.

2448. Powers and duties of board. The state board of health shall have general supervision of the interests and health and life of the citizens of the state. They shall study the vital statistics of the state, and endeavor to make intelligent use of the records of deaths and sickness among the people; they shall make sanitary investigations and inquiries regarding the causes of disease, and especially communicable diseases and epidemics; the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits, and circumstances of the health of the people; they shall gather such information in respect to all these matters as they may deem proper for diffusion among the people; they shall make an inspection once in each year, and at such other times as they may be directed to do so by the governor, of all public institutions, and make a report as to their sanitary conditions, with suggestions and recommendations to their respective boards of directors or trustees; and it shall be the duty of the official in the immediate charge of such institutions to furnish all the facilities necessary for a thorough investigation; they shall, when requested, or when they shall deem it best, advise officers of the government, or other boards within the state, in regard to location, drainage, water-supply, disposal of excreta, heating, and ventilation of any public institution or building; they shall have general oversight and direction of the enforcement of the statutes respecting the preservation of the health and the prevention of the spread of communicable diseases; they shall have general supervision of the work of local and county boards of health, hereinafter defined, and they shall, at each session of the legislature, submit through the governor a full report of their investigations, and such suggestions and recommendations as they may deem proper.

History: Ap. p. Sec. 2, p. 81, L. 1901; amd. Sec. 2, Ch. 110, L. 1907; Sec. 1475, Rev. C. 1907; re-en. Sec. 2448, R. C. M. 1921. Cal. Pol. C. Sec. 2979.

References

See *Campbell v. City of Helena*, 92 M 366, 379, 16 P 2d 1 for a general discussion of the state board of health.

2449. Meetings of board. The state board of health shall meet semi-annually at Helena, and at such other times and places as they may deem expedient. Suitable accommodations for the meetings of said board and office room for the secretary shall be provided at the state capitol. A majority shall be a quorum for the transaction of business. They shall choose one of their members to be president, and may adopt all necessary rules and by-laws subject to the provisions of this act. Special meetings

of the board may be called at any time by the president, through the secretary, upon five days' notice in writing.

History: En. Sec. 3, Ch. 110, L. 1907; Sec. 1476, Rev. C. 1907; re-en. Sec. 2449, R. C. M. 1921. Cal. Pol. C. Sec. 2981.

2450. Power to make and enforce rules and regulations. The state board of health shall have power to promulgate and enforce such rules and regulations for the better preservation of the public health in contagious and epidemic diseases as it shall deem necessary, and also regarding the causes and prevention of diseases, and their development and spread; and any person or corporation refusing, after notice in writing from the secretary of the state board of health, or from any local or county board of health, of such rules and regulations, to comply therewith, within a reasonable time, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten nor more than one hundred dollars, with costs of prosecution; and it shall be the duty of the secretary of the state board of health to prepare and distribute to local boards of health, physicians, and other persons requesting them, such printed circulars as the board may direct, and such rules and regulations as the board may promulgate as aforesaid.

History: En. Sec. 4, Ch. 110, L. 1907;
Sec. 1477, Rev. C. 1907; re-en. Sec. 2450,
R. C. M. 1921. Cal. Pol. C. Sec. 2984.

References
Campbell v, City of Helena, 92 M 266,
379, 16 P 2d 1.

2451. Compensation of members of board. Each member of the state board of health, except the secretary and ex-officio members, shall receive the sum of five dollars per day for each day's attendance at the meetings of the board, and his necessary traveling expenses. The claims of the members for such per diem and traveling expenses shall be presented to and audited and allowed by the state board of examiners, in the manner now provided by law for the allowance of similar claims of other state officers; provided, such expenses in the aggregate shall not exceed the annual sum of two thousand dollars.

History: En. Sec. 7, Ch. 110, L. 1907; Sec. 1480, Rev. C. 1907; re-en. Sec. 2451, R. C. M. 1921.

2452. Officers and corporations to furnish information when requested by board. In order to afford the better advantage for obtaining knowledge to be incorporated with that collected through special investigations and other sources, all officers of the state, the physician of all incorporated companies, and the president or agent of any company chartered, organized, or transacting business under the laws of this state, as far as it is practicable, shall furnish to the state board of health any information bearing upon public health which may be requested by said board, for the purpose of enabling it better to perform its duties of collecting and distributing useful information on this subject.

History: En. Sec. 8, Ch. 110, L. 1907; Sec. 1481, Rev. C. 1907; re-en. Sec. 2452, R. C. M. 1921.

2453. Inspection and regulation of schoolhouses, churches, and places of public resort. The state board of health shall prepare and issue to the local and county boards of health regulations for the lighting, heating, and ventilating of schoolhouses, and shall cause sanitary inspection to be

made of schoolhouses, churches, and all places of public resort, in towns or cities of one thousand or more inhabitants, and make such regulations concerning the same as it may deem necessary for the safety of the persons who may attend school or services therein or resort therto. And all schoolhouses, churches, or public buildings hereafter erected in such towns or cities shall conform to the regulations of the state board of health in respect to all sanitary conditions; and all persons, corporations, or committees intending to erect any public building hereinbefore named, in towns or cities of one thousand or more inhabitants, shall submit plans thereof, so far as to show the method of heating, ventilating, plumbing, and sanitary arrangements, to the secretary of the state board of health, and secure his approval thereof, or the approval of the state board of health on appeal from the decision of its secretary, before erecting said building, and shall conform strictly to all the requirements of the said board in the respects aforesaid, and any person, corporation, or committee that shall erect any such building without such approval, and without complying with such requirements, shall be guilty of a misdemeanor; and shall also make such building conform to the requirements of said board, before the same shall be used for any of the purposes above mentioned; and any such use of said building until such requirements have been complied with shall be a misdemeanor.

History: En. Sec. 9, Ch. 110, L. 1907; Sec. 1482, Rev. C. 1907; re-en. Sec. 2453, R. C. M. 1921.

Operation and Effect

The state board of health has authority by virtue of this and the next succeeding section, to compel the school board in a thickly settled community, in which the school buildings are not provided with adequate toilet facilities, whereby the

health of the entire community is endangered, to furnish proper sanitary means by installing proper toilets and either connecting the same with public sewers or with a private sewer system. *City of Kalispell v. School District*, 45 M 221, 229, 122 P 742.

References

Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2454. Public buildings found in unsanitary condition may be declared a public nuisance. When any schoolhouse, church, theater or other public building in the state shall, on inspection by a local, county, or state health officer, be found to be in such unsanitary condition as to endanger the health of those who may frequent the same, such health officer shall give to the owner, or those in charge of such building, notice to place the same in proper sanitary condition in such manner as he shall direct, and within a reasonable time; and should the owner, agent or other person in charge of such building fail, neglect, or refuse to place the said building in proper sanitary condition, in such manner as shall be directed, and within the time specified in said notice, then such building shall be deemed a public nuisance, and the local or county health officer or the secretary of the state board of health shall institute action against the same, in the manner now provided by law for the abating of a public nuisance.

History: En. Sec. 10, Ch. 110, L. 1907; Sec. 1483, Rev. C. 1907; re-en. Sec. 2454, R. C. M. 1921.

2454.1. Tourist camp ground defined. The term, tourist camp ground, as used in this act, shall include and mean any tract or parcel of land owned, maintained or used for public camping, primarily by automobile.

tourists whether the same shall be owned, used or maintained by any person, persons, co-partnership, firm or corporation upon which tract of land persons may camp or secure cabins or tents, either free of charge or by the payment of a fee, and whenever the words, tourist camp ground, are used in this act they shall be construed to mean a tourist camp ground as herein described and defined.

History: En. Sec. 1, Ch. 80, L. 1929.

2454.2. Regulation of tourist camp grounds by state board of health.

The state board of health is hereby empowered, authorized, and directed to make such rules and regulations for the conducting of such tourist camp ground as in its judgment shall be necessary to insure the greatest degree of sanitation, and as will most effectively conserve the health and promote the welfare of persons visiting and patronizing such camps, and monthly inspection shall be made of tourists camps by local and county health officers during the months of May, June, July, August and September and such additional inspections as may be required by the state board of health.

History: En. Sec. 2, Ch. 80, L. 1929.

2454.3. License for tourist camp ground—fee—sanitation required. It shall be unlawful for any person, persons, co-partnership, firm or corporation to conduct a tourist camp ground without having a license issued by the state board of health of Montana. Licenses shall be furnished upon request for that purpose. An annual fee of two dollars (\$2.00) shall be required for each license. Licenses shall be made to expire on the last day of December of the current year in which they are issued. No license shall be issued to any tourist camp ground that is conducted in a grossly unsanitary manner.

History: En. Sec. 3, Ch. 80, L. 1929.

2454.4. Violations and penalty—disposition of fines. Any person, persons, co-partnership, firm or corporation who operates a tourist camp ground without first obtaining a license from the state board of health, or who operates a tourist camp ground after his license has been revoked shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100.00). All fines collected for violations of the provisions of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the general fund of the state.

History: En. Sec. 4, Ch. 80, L. 1929.

2454.5. Cancellation of license—hearing—disposition of license fees. If as a result of inspection by an authorized representative of the state board of health, any licensed tourist camp ground found not to be conducted within a reasonable degree of compliance with the rules and regulations of the state board of health, the license may be cancelled by the secretary of the state board of health, provided that any licensee whose license is so cancelled, shall be entitled to a hearing before the state board of health to show cause, if any, why his license should not be cancelled. In such case licensee must make written request to the secretary of the state

board of health for a hearing within five days after notice has been received that his license has been cancelled. Fees collected by the state board of health for licenses issued shall be transmitted to the state treasurer and placed in the general fund of the state.

History: En. Sec. 5, Ch. 80, L. 1929.

2454.6. Rules and regulations of board of health to be posted at camp grounds. The rules and regulations promulgated by the state board of health covering the maintenance, operation and conduct of such tourist camp ground, shall be printed and kept posted in conspicuous places on the premises of each camp ground, and it shall be the duty of each owner or caretaker to see that such rules and regulations are posted and kept posted during the operation and maintenance of such tourist camp ground.

History: En. Sec. 6, Ch. 80, L. 1929.

2455. Contagious disease—restrictions of travelers. The state board of health shall have the power and it shall be their duty to issue and enforce reasonable rules for the restriction and prohibition of any person or persons suffering from a communicable, infectious, or contagious disease, traveling on public conveyances, and shall issue reasonable rules and regulations for the disinfection of passenger cars or any other public conveyance in which any person or persons, suffering from contagious, infectious, or communicable disease, has been traveling.

History: En. Sec. 25, Ch. 110, L. 1907; Sec. 1498, Rev. C. 1907; re-en. Sec. 2455, R. C. M. 1921.

2456. Rules and regulations for transportation of dead bodies. The state board of health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practicable, be in conformity with similar rules and regulations now in force in other North American states and countries, and to this end they may establish a system of licensing embalmers and undertakers.

History: En. Sec. 26, Ch. 110, L. 1907; Sec. 1499, Rev. C. 1907; re-en. Sec. 2456, R. C. M. 1921.

2457. Definition of "communicable disease." The term "communicable disease" as used in this act, shall be understood to include the following diseases: Smallpox, diphtheria, membranous croup, so-called scarlet fever, "spotted" or "tick" fever, typhus fever, enteric or typhoid fever, cerebrospinal meningitis, measles, whooping-cough, mumps, anterior-poliomyelitis, or infantile paralysis, and tuberculosis and other diseases as the state board of health may hereafter designate.

History: En. Sec. 27, Ch. 110, L. 1907; Sec. 1500, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1913; re-en. Sec. 2457, R. C. M. 1921.

2458. Quarantine measures. The state board of health, in case of danger of infection from smallpox, or any other infectious or contagious disease, dangerous to the public health, may institute and enforce quarantine measures against any state as it may deem necessary, and they shall enforce such quarantine measures against any city or county as they may deem necessary in order to prevent the spread of dangerous, infectious, or contagious diseases, and if any person or corporation refuse

or neglects to comply with such quarantine regulations, he shall, upon conviction, pay to the treasurer of the state a fine of not less than ten dollars or more than one hundred dollars.

History: En. Sec. 32, Ch. 110, L. 1907; Sec. 1505, Rev. C. 1907; re-en. Sec. 2458, R. C. M. 1921.

2459. Secretary authorized to act for state board in emergency cases. In case of imminent danger from infectious or contagious disease, where the health of the people would be endangered from the delay of action necessary to call a meeting of the state board of health, the secretary of the state board of health shall have the full power of the state board of health to act in such matter, until such time as a meeting of the state board of health may be duly called.

History: En. Sec. 37, Ch. 110, L. 1907; Sec. 1510, Rev. C. 1907; re-en. Sec. 2459, R. C. M. 1921.

2460. Penalties. Whoever shall knowingly violate any of the provisions of this act, or any rule or regulation of any county, city, or state board of health, made in accordance with the provisions of this act, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor.

History: En. Sec. 38, Ch. 110, L. 1907; Sec. 1511, Rev. C. 1907; re-en. Sec. 2460, R. C. M. 1921.

2461. Disposal of indigent lepers. When a case of leprosy occurs in an indigent person in the state of Montana, it shall be the duty of the state board of health, through its secretary, to communicate with the United States public health service, for the purpose of getting such case admitted to the federal home for lepers at Carville, Louisiana. If it is found that the case can be admitted, the state board of health shall have authority, and is empowered, to send the case to such institution at the expense of the county in which the case occurred and such case shall be transported in accordance with the rules and regulations of the United States public health service, relative to the interstate transportation of lepers.

History: En. Sec. 1, Ch. 124, L. 1921; re-en. Sec. 2461, R. C. M. 1921.

2462. Sewer system to be approved by board of health—appeal to district court. Whenever any city, town, or corporation or person shall hereafter contemplate the construction of any sewer system that will empty into any stream or source of water-supply in this state, they shall submit a plan of such proposed system to the state board of health, and said board shall cause a thorough investigation to be made, and if after such an investigation they shall determine that such sewerage will so pollute the waters of any stream or source of water-supply as to endanger the health or lives of the citizens of this state, or any of them, they shall submit to the judge of the district court of the district in which such proposed sewerage system is located, the evidence on which their findings are based, and if said judge, upon that evidence, and such other evidence as the judge may receive on a hearing at which all parties in interest may be heard and present evidence, if they desire, shall find that the action of the state board of health is just and unbiased, he shall issue an order

preventing the construction of such sewerage system, except under such conditions as the state board of health may designate.

A city or town may appeal to the district court of the county in which such city or town may be located, from any order of the state board of health affecting such city or town, at any time within thirty days after the service on the city or town council of such order. Such appeal may be taken by filing notice thereof in such court either before or after serving a copy of such notice on any member of the state board of health. The court may order pleadings to be filed to present the issues, and such case shall be tried de novo the same as an appeal from a justice court.

History: En. Sec. 36, Ch. 110, L. 1907;
Sec. 1509, Rev. C. 1907; amd. Sec. 1, Ch.
66, L. 1911; re-en. Sec. 2462, R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 266,
279, 16 P 2d 1.

2463. Adulterated and misbranded foods, drugs, etc., publication of list. It shall be the duty of the state board of health to furnish to the clerk of each county in the state a certified list of the adulterated and misbranded foods and products entering into the preparation of foods, beverages, candies, drugs, and all other products and preparations under the jurisdiction of said board of health, as found by the analysis and investigation of said board. Said list shall show the brand and name of the article, the manufacturer or jobber, and the reason for classing the same as illegal, together with any necessary comments thereon. The county clerk of each county, where said misbranded food is found, shall cause the said list to be printed in the official papers of such county. Such publication shall be made not more than four times each year, and shall be paid for by such county at the rate allowed by law for publishing the proceedings of the board of county commissioners; provided, that whenever the board of health, or their assistants, shall discover any foods, beverages, candies, drugs, or other products or preparations under the jurisdiction of said board, to be adulterated or misbranded, the said board of health shall immediately notify the party responsible for placing the same upon the market, and said party shall have ten days in which to show cause why the results of said investigation or analysis should not be published.

History: En. Sec. 1, Ch. 103, L. 1917; re-en. Sec. 2463, R. C. M. 1921.

2464. Local boards of health. Each incorporated city or town in the state shall have a local board of health, the same being designated in this act as the "local board." Said local board shall consist of three members, to be appointed by the municipal authorities of the town or city and removable at their pleasure, one of whom shall be a physician, legally qualified to practice medicine and surgery in the state; the board shall elect one of its members as secretary; provided, that any incorporated town of less than five thousand inhabitants may, by written notice to the state board of health, and to the county board of health of the county in which said town is located, place itself under the care of the county board of health, in which case the county health officer, as hereinafter provided for, shall have the same authority within the corporate limits of such town as he has in the county outside of corporate limits; provided, that such incorporated town shall pay all expenses incurred in enforcing sani-

tary measures and quarantines within its corporate limits. If the municipal authorities of any incorporated city or town shall fail to appoint a board of health as required above, within thirty days after having been notified of such requirement by the secretary of the state board of health, then the state board of health may appoint a health officer for such town or city, and the health officer thus appointed by the state board of health shall have all the powers, receive all the emoluments, and perform all the duties required of a local health officer appointed by the municipal authorities.

History: En. Sec. 11, Ch. 110, L. 1907; Sec. 1484, Rev. C. 1907; re-en. Sec. 2464, R. C. M. 1921. Cal. Pol. C. Secs. 3059-3064. Local Boards of Health.

References
Griffith v. City of Butte et al., 72 M 552, 562, 234 P 829; Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2465. Salaries of local health officers. The salary of each local health officer shall be determined by the municipal authorities of the respective city or town; provided, that such salaries shall not exceed, in counties of the first, second, and third classes, two thousand dollars per annum, and in counties of the fourth and fifth classes, twelve hundred dollars per annum, and in counties of the sixth, seventh, and eighth classes, not to exceed six hundred dollars per annum; and provided, further, that in all cases the state board of health shall have supervisory control over the action of all local county, city, or district health officers, who shall in all respects be subject to the direction of the state board.

History: En. Sec. 12, Ch. 110, L. 1907; Sec. 1485, Rev. C. 1907; re-en. Sec. 2465, R. C. M. 1921.

2466. Meetings of local boards of health—record. Each local board of health shall hold regular quarterly meetings, and such other meetings as may be deemed expedient. The secretary shall keep accurate records, in a book provided therefor, of the proceedings of such meetings. He shall keep accurate records of all communicable diseases reported to him, and for this purpose each local board of health shall provide, at the expense of the city or town, a book printed in proper blank form for the notation of such facts and data as may be prescribed by the regulations of the state board of health. These records shall be the property of the city or town, and must be turned over by the secretary to his successor in office.

History: En. Sec. 13, Ch. 110, L. 1907; Sec. 1486, Rev. C. 1907; re-en. Sec. 2466, R. C. M. 1921.

2467. Duties of local health officer. The local health officer shall make sanitary inspection whenever and wherever he has reason to suspect that anything exists that may be detrimental to the public health. He shall, as secretary of the local board of health, by a written instrument under his hand, order the destruction, prevention, and removal, within a specified time, of all nuisances, sources of filth, or causes of sickness, as directed by the local board of health, or order all public buildings, such as school-houses, churches, theaters, or other places where people congregate in considerable numbers, to be closed in time of epidemic or in the face of serious or unusual sickness, whenever, in his judgment and upon approval in writing by the secretary of the state board of health, safety may require the same, and may forbid and prevent the assembling of the people in any place when the public health and safety demand the same.

History: En. Sec. 14, Ch. 110, L. 1907; Sec. 1487, Rev. C. 1907; re-en. Sec. 2467, R. C. M. 1921.

Operation and Effect

Held, that this section making provision for a local health officer, does not provide for a deputy health officer. *Pue v. County of Lewis and Clark*, 75 M 207, 210, 243 P 573.

Id. The county health officer has no power to take steps for the abatement of nuisances or the removal of sources of filth and incur expense in connection therewith, without first having received authorization from the county health board.

References

Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2468. Penalties for failure to comply with orders of board. If any person or corporation shall neglect or refuse to comply with any written order of a local, county, or state health officer, made and promulgated by either of them under this act, within a reasonable time, to be designated in the notice, such person or corporation shall be guilty of a misdemeanor. In case of such neglect or refusal to comply with such order, the local, county, or state board of health may cause it to be complied with at the expense of the town, city, or county, and such expenses shall be recovered from the person or corporation whose legal duty it was to comply with such order, by a civil action brought in the name of such town, city, or county.

History: En. Sec. 15, Ch. 110, L. 1907; Sec. 1488, Rev. C. 1907; re-en. Sec. 2468, R. C. M. 1921.

References

Pue v. County of Lewis and Clark, 75 M 207, 210, 243 P 573; *Campbell v. City of Helena*, 92 M 266, 279, 16 P 2d 1.

2469. Powers of local board of health. The local or county board of health shall have power to abate all nuisances affecting the public health; to destroy, prevent, and remove all sources of filth and causes of sickness or disease, and to guard against the introduction of communicable diseases by the exercise of proper and vigilant medical inspection and control of all persons and things in their respective districts, which, for any reason, are liable to communicate contagious diseases. They shall also have authority to establish and maintain, at the expense of their respective city, town, or county, isolation hospitals, where patients suffering from smallpox or other very dangerous, contagious, or infectious disease may be properly quarantined and cared for, when, in their judgment, they cannot be properly quarantined and cared for elsewhere. Towns, cities, and counties must establish and maintain such isolation hospitals when directed so to do by the state board of health, and for this purpose they may secure, by purchase or otherwise, suitable building sites, and cities, towns, and counties may combine for the purpose of building, equipping, and maintaining such hospitals. The local or county boards of health shall also have power and authority to require the isolation of persons or things infected with or exposed to infectious or contagious diseases, provide suitable places for the reception thereof, and, if necessary, furnish medical treatment and care for such sick persons at the expense of the city, town, or county; to prohibit and prevent all intercourse or communication with, or use of infected premises, places, or things, and require and provide means for the thorough fumigation, purification, disinfection, and cleansing of the same before intercourse therewith or use thereof shall be allowed when any contagious or infectious disease exists or is believed to exist on any premises within his jurisdiction, the local or county health officer shall imme-

diately place such premises under quarantine, in accordance with the rules and regulations of the state board of health, and shall maintain such quarantine in accordance with such rules and regulations. At the expiration of the period of quarantine, the local or county health officer shall personally supervise the disinfection, fumigation, and cleansing of all persons or things which have been exposed to the contagion, and all disinfecting, fumigating, and cleansing shall be done in accordance with the rules and regulations of the state board of health, and at the expense of the city, town, or county.

History: En. Sec. 16, Ch. 110, L. 1907; Sec. 1489, Rev. C. 1907; re-en. Sec. 2469, R. C. M. 1921.

References

Griffith v. City of Butte et al., 72 M 522, 562, 234 P 829; Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2470. Expenses of local and county boards. All necessary expenses incurred by any local board of health, and the salary of each local health officer, shall be paid from the treasury of the respective city or town, on presentation of an itemized and verified account; and all expenses incurred by a county board of health in the enforcement of the provisions of this act, shall be paid from the general fund of the respective counties, on presentation of an itemized and verified account. The city or town shall be liable for all expenses incurred with reference to residents of such city or town, except paupers, and the county shall be liable for all expenses incurred with reference to persons who are not residents of such city or town; provided, that persons who are merely sojourning in such city or town, or delayed by the authorities, or transients therein, or temporarily stopping therein without employment, shall not be deemed residents of such city or town. The county shall be liable for all expenses necessarily incurred by any local board of health with respect to any person not a resident of the city or town, and the city shall be liable for all expenses necessarily incurred by any county board of health with reference to any person, except paupers, who is a resident of such city or town. No county, city, or town shall escape any such liability for such expenses by transporting any person infected with, or known to have been exposed to, any communicable disease to any other county, city, or town, or by persuading or inducing such person to go to such other city, town, or county.

History: En. Sec. 24, Ch. 110, L. 1907; Sec. 1497, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1909; re-en. Sec. 2470, R. C. M. 1921.

Operation and Effect

The county health officer has no power to take steps for the abatement of nuisances or the removal of sources of filth and incur expense in connection therewith,

without first having received authorization from the county health board. Pue v. County of Lewis and Clark, 75 M 207, 210, 243 P 573.

References

Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2471. Police officer must assist health officer when requested. Any local, county, or state health officer may call upon all sheriffs, constables, or other public officers to assist them in the discharge of their duties, and if any such officer, so called upon, shall neglect or refuse to render such service, he shall be guilty of a misdemeanor, and subject to removal from office.

History: En. Sec. 17, Ch. 110, L. 1907; Sec. 1490, Rev. C. 1907; re-en. Sec. 2471, R. C. M. 1921.

2472. Interference with health officer—penalty. Any person who shall attempt to hinder, or who shall hinder the work of a local, county, or state health officer, or who shall remove, deface, or obscure any placard or notice posted under the authority or by the direction of such officer, or who shall violate any quarantine regulation, is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 110, L. 1907; Sec. 1490, Rev. C. 1907; re-en. Sec. 2472, R. C. M. 1921.

2473. County boards of health. There is hereby established in each county a board of health which is designated in this act as the "County Board of Health," which shall consist of the board of county commissioners and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the board of county commissioners. Said physician when so appointed shall be ex-officio secretary of the county board of health and the county health officer, and shall hold office at the pleasure of the board. The county health officer shall have the same powers and perform the same duties in the county of his appointment, outside of the limits of incorporated towns or cities, as are hereinabove provided for a local health officer within the corporate limits of a town or city, and his salary shall be fixed by the board of county commissioners at an amount commensurate to the work devolving upon him, and when such county health officer, in the actual discharge of his official duties, is required to travel greater than two miles from the county-seat of the county he represents, he shall receive his actual traveling expenses.

History: En. Sec. 19, Ch. 110, L. 1907; Sec. 1492, Rev. C. 1907; re-en. Sec. 2473, R. C. M. 1921. For early acts see sections 163 to 167, 5th Division Compiled Statutes, 1887.

References

Pue v. County of Lewis and Clark, 75 M 207, 210, 243 P 573; Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2474. Appointment of county health officer. Should any board of county commissioners fail, neglect, or refuse to appoint a county health officer, as herein provided, for a period of thirty days after having been notified in writing by the secretary of the state board of health so to do, then, and in that event, the state board of health may appoint such health officer, and he shall have the same powers and perform the same duties, and receive the same emoluments as though appointed by the action of the board of county commissioners.

History: En. Sec. 20, Ch. 110, L. 1907; Sec. 1493, Rev. C. 1907; re-en. Sec. 2474, R. C. M. 1921.

2475. Duties of county boards of health—meetings. Each county board of health shall hold regular quarterly meetings, immediately after the adjournment of each regular quarterly meeting of the board of county commissioners, and at such other times as they may deem necessary, and may adopt all needful rules and regulations for the government of their respective bodies, subject to the provisions of this act; they shall establish such sanitary rules and regulations for their county for the prevention of the spread of disease as they may deem necessary; provided, that no such rule shall conflict with the rules and regulations of the state board of health, and any person who shall fail, neglect, or refuse to comply with such rules and regulations shall be guilty of a misdemeanor, and shall, on

conviction, be fined not less than ten dollars and not more than fifty dollars for such offense.

History: En. Sec. 21, Ch. 110, L. 1907; Sec. 1494, Rev. C. 1907; re-en. Sec. 2475, R. C. M. 1921.

2476. Duties of local and county health officers. It shall be the duty of each local and county health officer, immediately upon his appointment, to transmit to the secretary of the state board of health his name, date of appointment, post office address, together with the names and post office addresses of the members of the board of health of which he is secretary. He shall at the end of each week transmit to the secretary of the state board of health, on blanks provided therefor, a complete report of all cases of communicable diseases reported to him or known by him to have occurred in his jurisdiction during that week, giving all the details regarding each case as is indicated by the blank forms provided by the state board of health.

He shall, on or before the first day of January, April, July, and October, prepare a report which shall set forth the general health and sanitary condition of his district, give a detailed account of all of his activities as health officer during the previous quarter, and such other information as the state board of health may call for. He shall present this report to the county or local board of health of which he is secretary at the regular quarterly meeting of the said board; and he shall, not later than the tenth day of the same month, send a copy of this report to the secretary of the state board of health, stating thereon the date of the regular quarterly meeting of the local or county board of health at which the report was presented.

Any local or county health officer who shall fail, neglect or refuse to make either the above mentioned weekly or quarterly reports, within the time specified in this section, shall forfeit the sum of two dollars (\$2.00) for each day he is delinquent, which amount shall be deducted from his salary; and the secretary of the state board of health shall notify the chairman of the local or county board of health of the number of days its secretary is delinquent.

History: En. Sec. 22, Ch. 110, L. 1907; Sec. 1495, Rev. C. 1907; re-en. Sec. 2476, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1931.

References

Pue v. County of Lewis and Clark, 75 M 207, 210, 243 P 573; Campbell v. City of Helena, 92 M 266, 279, 16 P 2d 1.

2477. Failure of county or local health officer to perform duty—penalty. Any local or county health officer who shall fail, neglect, or refuse to comply with any of the requirements of this act, or of the rules and regulations of the state board of health, shall be subject to a fine of not more than two hundred dollars.

History: En. Sec. 23, Ch. 110, L. 1907; Sec. 1496, Rev. C. 1907; re-en. Sec. 2477, R. C. M. 1921.

2478. Duty of householder to notify board of health of presence of communicable disease. Whenever any householder knows or has reason to believe that any person within his family or household has any communicable disease, he shall immediately give notice thereof to the health officer of the town or city in which he resides, if within the corporate

limits of a town or city, or to the county health officer if without the corporate limits of a town or city; and such notice shall be given at the office of the local or county health officer, within the shortest possible time and by the most direct means of communication.

History: En. Sec. 28, Ch. 110, L. 1907; Sec. 1501, Rev. C. 1907; re-en. Sec. 2478, R. C. M. 1921.

2479. Duty of physicians and other practitioners to report communicable diseases. Whenever any physician or other practitioner of the healing art examines or treats a person who has or is reasonably believed to have a communicable disease or any disease declared reportable by the state board of health, such physician or other practitioner shall immediately report the case to the county or local health officer having jurisdiction of the territory in which the said case is found. The report shall be in the form and manner prescribed by the state board of health.

History: En. Sec. 29, Ch. 110, L. 1907; Sec. 1502, Rev. C. 1907; re-en. Sec. 2479, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1933.

2480. Duty of health officer to file complaint of violation of act. It shall be the duty of each local or county health officer in the state, who shall have knowledge of any violation of this act, occurring within his district, to forthwith file a complaint with a justice or magistrate having jurisdiction.

History: En. Sec. 30, Ch. 110, L. 1907; Sec. 1503, Rev. C. 1907; re-en. Sec. 2480, R. C. M. 1921.

2481. Compulsory vaccination of school children. Whenever smallpox exists or is threatened in any part of the state, the state board of health shall have authority to require all persons frequenting any schoolhouse within the infected or threatened district to be vaccinated, or to present evidence of a successful vaccination with cowpox, and no person shall be permitted to enter any schoolhouse within the district included in the order of the state board of health unless such requirements are complied with.

History: En. Sec. 31, Ch. 110, L. 1907; Sec. 1504, Rev. C. 1907; re-en. Sec. 2481, R. C. M. 1921.

2482. Diseased prisoners. Whenever any person in any jail shall be attacked with any disease which, in the opinion of the local or county health officer, shall be considered dangerous to the health of the other prisoners, the health officer may, by his order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until his further orders, and if such prisoner shall recover from such disease he shall be returned to such jail.

History: En. Sec. 33, Ch. 110, L. 1907; Sec. 1506, Rev. C. 1907; re-en. Sec. 2482, R. C. M. 1921.

2483. Same. If any person removed from any jail by any health officer shall have been committed by order of any court or under any judicial process, the order for his removal, or a copy thereof, attested by the health officer issuing such order, shall be returned to him, with the proceedings indorsed thereon, to the office of the clerk of the district

court of the county, and no prisoner removed as aforesaid shall be considered as thereby having committed an escape.

History: En. Sec. 34, Ch. 110, L. 1907; Sec. 1507, Rev. C. 1907; re-en. Sec. 2483, R. C. M. 1921.

2484. Penalties for putting dead animals into streets, highways, etc. If any person or persons shall put any dead animal, or part of the carcass of any dead animal, into any lake, river, creek, pond, reservoir, road, street, alley, lot, field, or meadow or common, or in any place within one mile of the residence of any person or persons, except the same and every part thereof be burned, or buried at least two feet under ground, or who, being the owner, shall knowingly permit the same to remain in any of the aforesaid places to the injury of the health, or to the annoyance of the citizens of this state, or any of them, every person so offending shall be guilty of a misdemeanor, and every twenty-four hours that said person shall permit the same to remain shall be deemed an additional offense under the provisions of this act.

History: En. Sec. 35, Ch. 110, L. 1907; Sec. 1508, Rev. C. 1907; re-en. Sec. 2484, R. C. M. 1921.

CHAPTER 231

HOTEL AND TENEMENT-HOUSE SANITATION—CONTROL BY BOARD OF HEALTH

- Section 2485. Hotel defined—must maintain office and register.
 2486. Regulation of hotels as to sanitation, plumbing, and washroom supplies.
 2487. Bedrooms and bedding, regulation of.
 2488. Regulation of cooking utensils, kitchens and dining-rooms.
 2489. Ashes.
 2490. Fumigation of rooms.
 2491. State board of health to adopt rules for enforcement of act.
 2492. Appointment of assistant by state board of health—qualifications.
 2493. Certificate of inspection—posting.
 2494. Inspector to file complaints for violation of act—preliminary notice.
 2495. Disposal of fines.
 2497. Drinking water.
 2498. Penalty for violations.
 2499. Cleansing walls before putting on new paper or wall covering.
 2500. Duty in case of contagious or infectious disease.
 2501. County and city boards of health to enforce act.
 2502. Violation of act a misdemeanor.

2485. Hotel defined—must maintain office and register. Every building or structure kept, used, or maintained as, or advertised as, or held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations are furnished for hire to transient guests, whether with or without meals, in which five or more rooms are used for the accommodation of such transient guests, shall maintain an office and register and for the purpose of this act shall be deemed to be a hotel, and whenever the word hotel shall occur in this act, it shall be construed to mean every such structure as described in this section.

History: En. Sec. 1, Ch. 36, L. 1919; re-en. Sec. 2485, R. C. M. 1921. **References**
 State ex rel. Altop v. City of Billings
 et al., 79 M 25, 28, 255 P 11.

2486. Regulation of hotels as to sanitation, plumbing, and washroom supplies. Every hotel shall be well constructed, plumbed and drained according to established sanitary principles; shall be kept clean and in a

sanitary condition, free from effluvia arising from any sewer, drain, privy, or other source within control of owner, manager, agent, or other person in charge. All hotels in cities, towns, and villages where a system of water-works and sewers is maintained for public use, shall be equipped with suitable lavatories and toilet facilities, within the building, for the accommodation of its guests. The sewer must be connected with the public sewer system. Public washrooms must be supplied with clean individual towels or paper towels. Use of the common roller towel is absolutely prohibited. All hotels in cities, towns, or villages not having a public sewer system or water works, shall have properly constructed privies, vaults, or other sanitary devices, which shall always be kept clean, properly ventilated, and well-screened from insects and rodents, and shall be provided with tight-fitting self-closing doors. All toilets or privies shall be lighted. The wall or partition between the apartments must be tight. A separate apartment with separate entrance, properly designated and screened from public view, must be provided for each sex. Where septic tanks are installed, they must be constructed according to plans approved by the state board of health.

History: En. Sec. 2, Ch. 36, L. 1919;
re-en. Sec. 2486, R. C. M. 1921.

References

State ex rel. Attop v. City of Billings
et al., 79 M 25, 28, 255 P 11.

2487. Bedrooms and bedding, regulation of. All bedrooms shall be kept free from vermin, and the bedding shall be clean and sufficient in quantity and quality; all sheets shall be at least eight feet long; each guest shall at all times be furnished with two clean towels; in case bedrooms are carpeted, the carpet or carpets thereon shall be taken up and thoroughly cleaned at least once each year; and in all hotels where fifty cents or more per night is charged for lodging, the sheets and pillow cases shall be changed after the departure of each guest.

History: En. Sec. 3, Ch. 36, L. 1919; re-en. Sec. 2487, R. C. M. 1921.

2488. Regulation of cooking utensils, kitchens, and dining-rooms. No rusted tin or iron vessel or utensil shall be used in cooking food, and all food stuffs shall be kept in a clean and suitable place, free from dampness and contamination; the closets, cupboards, refrigerators and the floors and walls of all kitchens and dining-rooms shall be, at all times, kept free from dirt, and no dust or greases shall be allowed to collect thereon.

History: En. Sec. 4, Ch. 36, L. 1919; re-en. Sec. 2488, R. C. M. 1921.

2489. Ashes. No ashes from any hotel shall be dumped or kept in or adjacent thereto, or in any outhouse connected with any hotel unless the same be placed in a tight metal container with a tight metal lid kept thereon, or be disposed of in such manner as to eliminate any possibility of fire and public nuisances.

History: En. Sec. 5, Ch. 36, L. 1919; re-en. Sec. 2489, R. C. M. 1921.

2490. Fumigation of rooms. Whenever any room in any hotel shall have been occupied by any person having a contagious or infectious disease, the said room shall be thoroughly fumigated under the direction of the health officer, and all bedding therein thoroughly disinfected, before said room shall be occupied by any other person; but, in any event, such

room shall not be let to any person for at least twenty-four hours after such fumigation, or disinfection.

History: En. Sec. 6, Ch. 36, L. 1919; re-en. Sec. 2490, R. C. M. 1921.

2491. State board of health to adopt rules for enforcement of act. The state board of health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state.

History: En. Sec. 7, Ch. 36, L. 1919;
re-en. Sec. 2491, R. C. M. 1921.

References

State ex rel. Altop v. City of Billings
et al., 79 M 25, 28, 255 P 11.

2492. Appointment of assistants by state board of health—qualifications. It shall be the duty of the state board of health and it shall have power, jurisdiction, and authority to engage or appoint such assistants or inspectors as may be needed in enforcing the provisions of this act and the rules and regulations as provided for under the preceding section. Such inspectors or appointees shall possess such qualifications as the state board of health may determine are necessary to successfully carry on the work. The state board of health shall also fix their compensation and shall assign to them their duties.

History: En. Sec. 8, Ch. 36, L. 1919; re-en. Sec. 2492, R. C. M. 1921.

2493. Certificate of inspection—posting. If the inspector shall find, after the examination of any hotel that the provisions of this act and the rules and regulations of the state board of health adopted in conformity therewith have been fully complied with he shall issue a certificate to the effect to the person operating the same, and said certificate shall be posted in a conspicuous place in said inspected building.

History: En. Sec. 9, Ch. 36, L. 1919; re-en. Sec. 2493, R. C. M. 1921.

2494. Inspector to file complaints for violation of act—preliminary notice. It shall be the duty of the inspector, upon ascertaining by inspection or otherwise, that any hotel or other place or thing required or allowed by this act to be inspected, is being carried on contrary to the provisions of this act, to make complaint and cause the arrest of the person so violating the same, and it shall be the duty of the county attorney in such case to prepare all necessary papers and conduct such prosecution; provided, however, that no prosecution shall follow until such time as the person conducting or operating such hotel, public inn or lodging house, has been notified wherein such hotel, public inn or lodging house fails to meet the requirements of this act or the rules and regulations of the state board of health, and such time to remedy the failure as the state board of health or its representatives may rule.

History: En. Sec. 10, Ch. 36, L. 1919; re-en. Sec. 2494, R. C. M. 1921.

2495. Disposal of fines. All moneys collected for fines under this act shall be turned over to the state treasurer, who shall deposit them to the credit of the general fund.

History: En. Sec. 11, Ch. 36, L. 1919; amd. Sec. 1, Ch. 84, L. 1921; re-en. Sec. 2495, R. C. M. 1921.

2496. Omitted.

2497. Drinking water. It shall be the duty of every person conducting or operating a hotel, public inn or lodging house to have available at all times in the lobby, office, or other convenient place, an ample supply of drinking water, pure and free from contamination. The source of supply must be far enough removed from privy vaults or other means of contamination to prevent drainage from said vaults to the wells or other source of supply, and the water supply shall be subject to examination by the state board of health and when found unfit for drinking purposes, its use must be discontinued forthwith.

History: En. Sec. 12, Ch. 36, L. 1919; re-en. Sec. 2497, R. C. M. 1921.

2498. Penalty for violations. Each owner, manager, agent, or person in charge of a hotel, or other business mentioned in this act, who violates any provisions of this act shall be deemed guilty of a misdemeanor and shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned in the county jail for not less than ten days, nor more than three months, or both, and every day that such hotel is carried on in violation of this act shall constitute a separate offense.

History: En. Sec. 13, Ch. 36, L. 1919; re-en. Sec. 2498, R. C. M. 1921.

2499. Cleansing walls before putting on new paper or wall covering. Whenever the paper or substitute wall covering on the ceiling or walls of a room in any dwelling, tenement, or apartment house, or house owned or maintained for rental purposes, has become loosened so as to be in danger of collecting and retaining dust, germs, vermin, or filth, the same shall be removed, and the walls and ceilings thoroughly cleaned before new wall-paper or substitute wall covering shall be put thereon.

History: En. Sec. 1, Ch. 160, L. 1917; re-en. Sec. 2499, R. C. M. 1921.

2500. Duty in case of contagious or infectious disease. No wall-paper or substitute wall covering shall be placed upon the walls or ceiling of any room where there has been a case of contagious or infectious disease, until all wall-paper and substitute wall covering thereon has been entirely removed, and the walls and ceiling thoroughly cleansed, oil-painted walls and ceilings excepted.

History: En. Sec. 2, Ch. 160, L. 1917; re-en. Sec. 2500, R. C. M. 1921.

2501. County and city boards of health to enforce act. The county board of health in each county of this state shall have power to examine into the enforcement of this act in any city, town, or elsewhere within its respective county; provided, that in cities or towns where a board of health is established, then such city board of health shall have such power to examine into the enforcement of this act within the boundaries of such city or town.

History: En. Sec. 3, Ch. 160, L. 1917; re-en. Sec. 2501, R. C. M. 1921.

2502. Violation of act a misdemeanor. That any person or persons who violates any of the provisions of this act, or who shall cause any person or persons to violate any section of this act, shall be deemed guilty of a misdemeanor.

History: En. Sec. 4, Ch. 160, L. 1917; re-en. Sec. 2502, R. C. M. 1921.

CHAPTER 232

CHILD WELFARE DIVISION OF STATE BOARD OF HEALTH—
MONTANA ORTHOPEDIC COMMISSION

- Section 2503. Child welfare division created.
2504. Duties of division.
2505. Employment of school nurses.
2506. Employment of county nurses.
2507. Rules and regulations governing work of nurses.
2508. Report blanks—preparation and distribution.
2509.. Employment of officers to enforce act.
2510. Interference with religious belief of child or parent prohibited.
2511. Appropriation for care of indigent crippled children.
2512. Montana orthopedic commission—creation—expenses.
2513. Duty of commission—employment and salary field investigator.
2514. Commission may order special care and operation—claims.

2503. Child welfare division created. That a child welfare division be and the same is hereby created, which shall be under the direct supervision of the state board of health.

History: En. Sec. 1, Ch. 121, L. 1917; re-en. Sec. 2503, R. C. M. 1921.

2504. Duties of division. The duties of this division shall be to make and enforce regulations, to carry on a campaign of public health education, and to take all possible steps for the better protection of the health of the children of the state.

History: En. Sec. 2, Ch. 121, L. 1917; re-en. Sec. 2504, R. C. M. 1921.

2505. Employment of school nurses. School boards may employ, in their discretion, regularly qualified nurses, duly registered in the state of Montana, to act as school nurses. In sparsely settled communities two or more school boards may unite and employ a school nurse, the salary of such nurse being paid pro rata according to the assessed valuation in the school districts.

History: En. Sec. 3, Ch. 121, L. 1917; re-en. Sec. 2505, R. C. M. 1921.

2506. Employment of county nurses. County commissioners are hereby authorized, at such time as they deem necessary, to employ regularly qualified nurses, to be known as county nurses, for duties under the child welfare division.

History: En. Sec. 4, Ch. 121, L. 1917; re-en. Sec. 2506, R. C. M. 1921.

2507. Rules and regulations governing work of nurses. The superintendent of public instruction and the secretary of the state board of health, as soon as possible after the passage of this act, shall meet and formulate rules and regulations governing the work of school, county, and public health nurses, which rules and regulations, when regularly passed by the state board of health, shall invest the said state board of health with full power of supervision and regulation of said school and county and public health nurses.

History: En. Sec. 5, Ch. 121, L. 1917; re-en. Sec. 2507, R. C. M. 1921.

2508. Report blanks—preparation and distribution. The state board of health, through its child welfare division, shall prepare and distribute to the school, county, and public health nurses all necessary report blanks.

History: En. Sec. 6, Ch. 121, L. 1917; re-en. Sec. 2508, R. C. M. 1921.

2509. Employment of officers to enforce act. The secretary of the state board of health, subject to the approval of said board, shall employ such officers as may be necessary to carry out the provisions of this act.

History: En. Sec. 7, Ch. 121, L. 1917; re-en. Sec. 2509, R. C. M. 1921.

2510. Interference with religious belief of child or parent prohibited. Nothing in this act shall be construed or operate so as to interfere in any way with the exercise of the child's or parent's religious belief, as to the examination for or in the treatment of diseases; provided, that quarantine regulations relating to contagious or infectious diseases are not infringed upon.

History: En. Sec. 8, Ch. 121, L. 1917; re-en. Sec. 2510, R. C. M. 1921.

2511. Appropriation for care of indigent crippled children. There is hereby appropriated out of any money in the general fund of the state of Montana, not otherwise appropriated, the sum of twenty-five thousand dollars, to be used for the actual hospital and operating expenses, in the care of the indigent crippled children of the state of Montana who are at the instance or direction of the Montana orthopedic commission, cared for in any hospital within the state of Montana; said money so appropriated to be administered and expended at the instance and under the direction of the Montana orthopedic commission as hereinafter prescribed.

History: En. Sec. 1, Ch. 154, L. 1921; re-en. Sec. 2511, R. C. M. 1921.

2512. Montana orthopedic commission—creation—expenses. There is hereby created a commission composed of five members to be known as the Montana orthopedic commission, members of which shall consist of the secretary of the state board of health, the president of the Montana state medical association, a representative of the Montana tuberculosis association, and two members of the Montana federation of women's clubs, the latter three members to be appointed by the governor, and to serve until such time as they are removed by the governor. Such commission shall serve without pay; except the members thereof, shall be entitled to the actual necessary and traveling expenses incurred, when serving on the business of the commission.

History: En. Sec. 2, Ch. 154, L. 1921; re-en. Sec. 2512, R. C. M. 1921.

2513. Duty of commission—employment and salary field investigator. It shall be the duty of this commission to examine into the matter of all applicants for relief, whenever any child or person within the state of Montana who is crippled and in indigent circumstances shall apply for relief in the matter of obtaining medical, surgical, and hospital expenses. The said commission in its discretion is hereby authorized to employ not to exceed one field investigator whose salary and expenses shall be paid from the money herein appropriated; provided, that such salary and expenses shall not exceed the sum of four thousand dollars.

History: En. Sec. 3, Ch. 154, L. 1921; re-en. Sec. 2513, R. C. M. 1921.

2514. Commission may order special care and operations — claims. Whenever the need for relief has been established to the satisfaction of this commission, a special order for the care, treatment, and if an operation is necessary, an operation at any hospital properly equipped for the treatment of such cases shall be made, and all bills and statements for service

so rendered for any crippled child or person, upon an order given by said Montana orthopedic commission, shall be first referred to said commission and if found correct by them, they shall so designate upon the said claim, and such claim shall then be allowed, and paid from the appropriation hereby made, upon presentation to, and approval by, the state board of examiners.

History: En. Sec. 4, Ch. 154, L. 1921; re-en. Sec. 2514, R. C. M. 1921.

CHAPTER 233

STATE BUREAU OF VITAL STATISTICS—REGISTRATION OF BIRTHS AND DEATHS

- Section 2515. State bureau of vital statistics—creation of.
 2516. State registrar to make rules and regulations.
 2517. Local registrars.
 2518. Local registrars must file duplicate returns with county clerk—duty of clerk.
 2520. Registry of births.
 2521. Registry of deaths.
 2522. Parents to report births, when.
 2523. Duties of county clerk.
 2524. Certified copies of records—fees.
 2525. Registration of births in district of occurrence.
 2526. Registration of deaths—burial permits.
 2527. Form of registry certificates.
 2528. Death certificates and burial permits.
 2529. When undertaker to notify registrar of deaths.
 2530. Certificate of birth.
 2531. Duty of sexton or person in charge of cemetery.
 2532. Duties of state registrar.
 2533. Duties of local registrars.
 2534. Fees for filing certificate of birth.
 2535. Registration of physicians, midwife, and undertaker.
 2536. Hospital record.
 2537. Compensation of local registrar.
 2538. Penalties.
 2539. Registrars charged with duty of enforcing act.

2515. State bureau of vital statistics—creation of. For the complete and proper registration of births and deaths for legal, sanitary, and statistical purposes, there shall be and hereby is established and created a state bureau of vital statistics, to be under the immediate superintendence of the secretary of the state board of health of Montana, who shall be the state registrar.

History: En. Sec. 1, Ch. 25, L. 1907; re-en. Sec. 1764, Rev. C. 1907; re-en. Sec. 2515, R. C. M. 1921. Cal. Pol. C. Sec. 3074.

2516. State registrar to make rules and regulations. The state registrar is hereby empowered to make, promulgate, and enforce such rules and regulations as he may consider necessary, with the approval of the majority of the members of the state board of health, to carry out the provisions of this act.

History: En. Sec. 2, Ch. 25, L. 1907; re-en. Sec. 1765, Rev. C. 1907; re-en. Sec. 2516, R. C. M. 1921. Cal. Pol. C. Sec. 3074.

2517. Local registrars. The health officer of each city or town shall be the local registrar in and for the city or town of which he is health officer, and he shall perform all the duties of local registrar as hereinafter provided. And when it may appear necessary for the convenience of the

people of any locality, the state registrar is hereby authorized, with the approval of the state board of health, to appoint one or more suitable and proper persons to act as subregistrars, who shall be authorized to receive certificates and to issue burial and removal permits in and for such portions of the county or district as may be designated in their appointments, and they shall be subject to the same requirements and obligations as the local registrars, and shall make returns directly to the state registrar, as hereinafter provided.

And any justice of the peace of any township is hereby required to act as local registrar of births and deaths for the district in which he resides when called upon to do so by the state registrar of births and deaths.

History: En. Sec. 3, Ch. 25, L. 1907; re-en. Sec. 1766, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1911; re-en. Sec. 2517, R. C. M. 1921.

2518. Local registrars must file duplicate returns with county clerk—duty of clerk. That every local registrar and subregistrar of births and deaths provided for by the preceding section, in addition to sending to the state registrar the returns required by law, must file duplicate returns with the county clerk in which said registrars are located, which returns so filed must be entered by the county clerk in the respective registers of births and deaths kept by such officer.

History: En. Sec. 1, Ch. 68, L. 1919; re-en. Sec. 2518, R. C. M. 1921.

NOTE.—The above section has been changed by the code commissioner, 1921, to conform to subsequent enactments.

2519. Omitted.

2520. Registry of births. All physicians and professional midwives must keep a record of the time of each birth at which they assist professionally, the sex, race, and color of the child, and the names and residence of the parents, and must promptly report such facts to the local registrar.

History: En. Sec. 2871, Pol. C. 1895; re-en. Sec. 1759, Rev. C. 1907; re-en. Sec. 2520, R. C. M. 1921. Cal. Pol. C. Sec. 3077.

NOTE.—The above section has been changed by the code commissioner, 1921, to conform to subsequent enactments.

2521. Registry of deaths. Physicians who attend deceased persons in their last sickness, clergymen who officiate at a funeral, coroners who hold inquests, sextons and undertakers who bury deceased persons, must each keep a record of the name, age, residence, and time of death of such person and must promptly report such facts to the local registrar.

History: En. Sec. 2872, Pol. C. 1895; re-en. Sec. 1760, Rev. C. 1907; re-en. Sec. 2521, R. C. M. 1921.

NOTE.—The above section has been changed by the code commissioner, 1921, to conform to subsequent enactments.

2522. Parents to report births, when. If at any birth no physician or midwife attends, the parents must make a report to the local registrar.

History: En. Sec. 2874, Pol. C. 1895; re-en. Sec. 1762, Rev. C. 1907; re-en. Sec. 2522, R. C. M. 1921. Cal. Pol. C. Sec. 3077.

NOTE.—The above section has been changed by the code commissioner, 1921, to conform to subsequent enactments.

2523. Duties of county clerk. The county clerk must keep separate registers, to be known as the "register of births," and the "register of deaths," in which the births and deaths certified to him must be numbered in the order in which they are reported to him. There must be stated in each register, in separate columns, properly headed, the various facts

contained in the certificates, and the name and official or clerical position of the person making the report. The county clerk must carefully examine each report, and register the same birth or death but once, although it may be reported by different persons.

History: En. Sec. 2875, Pol. C. 1895; re-en. Sec. 1763, Rev. C. 1907; re-en. Sec. 2523, R. C. M. 1921. **NOTE.**—The above section has been changed by the code commissioner, 1921, to conform to subsequent enactments.

2524. Certified copies of records—fees. Every county clerk is required to issue a certified copy of a record of birth or death upon demand of any such record on file in his office, and shall receive on behalf of the county as the fee for such certified copy the sum of twenty-five cents.

History: En. Sec. 3, Ch. 68, L. 1919; re-en. Sec. 2524, R. C. M. 1921.

2525. Registration of births in district of occurrence. All births shall be registered in the district in which they occur as hereinafter provided.

History: En. as one of Secs. 1 to 18, Ch. 25, L. 1907; re-en. Sec. 1767, Rev. C. 1907; re-en. Sec. 2525, R. C. M. 1921.

2526. Registration of deaths—burial permits. The body of any person whose death occurs in the state shall not be interred, or otherwise disposed of, or removed from or into any registration district, until a permit for a burial or removal shall have been properly issued by the registrar of the district in which the death occurs. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him, as hereinafter provided. Still-born children, or those dead at birth, shall be registered as births and also as deaths, and a certificate of both the birth and death shall be filed in the usual manner.

History: En. Sec. 5, Ch. 25, L. 1907; re-en. Sec. 1768, Rev. C. 1907; re-en. Sec. 2526, R. C. M. 1921.

2527. Forms of registry certificates. The forms of certificates used in registering births and deaths under this act shall be the standard form recommended by the bureau of the census and the American public health association.

History: En. Sec. 6, Ch. 25, L. 1907; re-en. Sec. 1769, Rev. C. 1907; re-en. Sec. 2527, R. C. M. 1921.

2528. Death certificates and burial permits. The undertaker or person acting as undertaker shall be responsible for obtaining and filing the certificate of death with the registrar, and securing a burial permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them, and present the certificate to the attending physician for the medical certificate of the cause of death, and said attending physician shall, upon such certificate coming to his notice, forthwith, and without delay, make his certificate of the cause of death, and said undertaker shall then present the completed certificate to the registrar to secure the burial or removal permit. The undertaker shall deliver duplicate burial permit to the sexton, or person in charge of the place of burial, before interring the body. The medical certificate shall be made and signed by the attending physician, if any, last in attendance on the deceased, who shall specify the

time in attendance, the time he last saw deceased alive, and the hour of the day at which the death occurred. And the cause of death and all other facts required shall in all cases be stated in accordance with the rules and regulations of the state registrar, and if any undertaker, attending physician, or registrar shall fail to perform any of the acts hereinabove prescribed, he shall be guilty of a misdemeanor.

History: En. Sec. 7, Ch. 25, L. 1907; re-en. Sec. 1770, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1909; re-en. Sec. 2528, R. C. M. 1921.

2529. When undertaker to notify registrar of deaths. In case of any death occurring without medical attendance it shall be the duty of the undertaker to notify the registrar of such death, and when so notified, the registrar shall inform the local health officer or coroner, and refer the case to him for immediate investigation and certification prior to issuing a burial permit.

History: En. Sec. 8, Ch. 25, L. 1907; re-en. Sec. 1771, Rev. C. 1907; re-en. Sec. 2529, R. C. M. 1921.

2530. Certificate of birth. The certificate of birth shall be made and filed by the attending physician or midwife within ten days after the date of birth. And if there is no attending physician or midwife, then it shall be the duty of the father of the child, householder or owner of the premises, or the head of the hospital or institution in which the birth occurred, to make and file the certificate within ten days after birth.

History: En. Sec. 9, Ch. 25, L. 1907; re-en. Sec. 1772, Rev. C. 1907; re-en. Sec. 2530, R. C. M. 1921.

2531. Duty of sexton or person in charge of cemetery. No sexton or person in charge of any cemetery in which interments are made shall inter or permit the interment of any body unless it is accompanied by a burial permit as herein provided. And he shall indorse upon one of the permits the date of interment, over his signature, and return all permits so indorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of the undertaker, which record shall at all times be open to public inspection.

History: En. Sec. 10, Ch. 25, L. 1907; re-en. Sec. 1773, Rev. C. 1907; re-en. Sec. 2531, R. C. M. 1921.

2532. Duties of state registrar. The state registrar shall prepare, print, and supply to all registrars all blanks and forms used in registration, recording, and preserving the returns, or in otherwise carrying out the purposes of this act, and shall prepare and issue such rules and regulations as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. He shall arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card-index of all births and deaths registered. He shall inform all registrars what diseases are to be considered as infectious, contagious, or communicable, and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken

to prevent the spreading of dangerous diseases. And he shall annually certify to the treasurer of the several counties the number of births and deaths registered, and the names of the local registrars, with the amounts due each at the rate fixed herein.

History: En. Sec. 11, Ch. 25, L. 1907; re-en. Sec. 1774, Rev. C. 1907; re-en. Sec. 2532, R. C. M. 1921.

2533. Duties of local registrars. It shall be the duty of the local registrar or subregistrar to supply blank forms of certificates to such persons as require them. And he shall carefully examine each certificate of birth or death, when presented for record, to see that it has been made out in accordance with the provisions of this act and the instructions of the state registrar, and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defect in the return, and withhold issuing the burial permit until they are corrected. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious, or communicable, and dangerous to public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under the conditions prescribed by the state and local boards of health. If a certificate of birth is incomplete, he shall immediately notify the informant and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of births and deaths in two separate series, beginning with "number one" for the first birth and the first death in the calendar year, and sign his name as registrar in attestation of the date of filing in his office. He shall also make a complete and accurate copy of each birth and death certificate registered by him, upon a form identical with the original certificate, to be filed and properly preserved in his office as the local record of such birth and death, in such manner as directed by the state registrar, and he shall, on the fifth day of each month, transmit to the state registrar all the original certificates registered by him during the preceding month. And if no births or no deaths occur in any month, he shall, on the fifth day of the following month, report that fact to the state registrar in such manner as the state registrar shall direct.

History: En. Sec. 12, Ch. 25, L. 1907; re-en. Sec. 1775, Rev. C. 1907; re-en. Sec. 2533, R. C. M. 1921.

2534. Fees for filing certificate of birth. Each physician, midwife, father of child, householder, or owner of premises, manager or superintendent of public or private institution, or other person acting as informant and filing with the local registrar, within ten days after the birth of a child, a proper certificate correctly and legibly made out, and containing all the items required by the provisions of this act and the rules and regulations of the state registrar, shall be entitled to receive the sum of fifteen cents, to be paid by the treasurer of the county upon certification by the state registrar. Only one certificate shall be received of the birth of the same child, and the order of right to file the certificate shall be the same as the order of responsibility for filing as herein given. Certifi-

ates in which certain items are missing shall not be regarded as complete, and shall not be entitled to payment until the missing items have been supplied. And the state registrar shall annually certify to the treasurers of the several counties the number of births registered, with the name of the person registering them and the amounts due each at the rate fixed therein.

History: En. Sec. 13, Ch. 25, L. 1907; re-en. Sec. 1776, Rev. C. 1907; re-en. Sec. 2534, R. C. M. 1921.

2535. Registration of physicians, midwife, and undertaker. Every physician, midwife, and undertaker shall, without delay, register his or her name, address, and occupation with the local registrar of the district in which he or she resides, or may hereafter acquire residence, and shall thereupon be furnished by the registrar with a copy of this act, and such rules and regulations as may be prepared by the state registrar relative to its enforcement.

History: En. Sec. 14, Ch. 25, L. 1907; re-en. Sec. 1777, Rev. C. 1907; re-en. Sec. 2535, R. C. M. 1921.

2536. Hospital record. All superintendents or managers, or other persons in charge of hospitals or lying-in institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to the inmates in their institutions at the date of the approval of this act, that are required in the form of certificate herein provided for, as directed by the state registrar. And thereafter such records shall be made by them, for all future inmates, at the time of admission.

History: En. Sec. 15, Ch. 25, L. 1907; re-en. Sec. 1778, Rev. C. 1907; re-en. Sec. 2536, R. C. M. 1921.

2537. Compensation of local registrar. Each local registrar or sub-registrar shall be entitled to be paid the sum of twenty-five cents for each birth and each death certificate completely and properly made out and filed with him, to be paid by the treasurer of the county upon certification by the state registrar. He shall supply blank forms of certificate to such persons as require them, and shall carefully examine the certificates presented for record and require them to be properly made out. And he shall keep such records and make such returns to the state bureau as may be required by the rules and regulations of the state registrar.

History: En. Sec. 16, Ch. 25, L. 1907; re-en. Sec. 1779, Rev. C. 1907; re-en. Sec. 2537, R. C. M. 1921.

2538. Penalties. If any attending physician shall refuse or neglect to make the medical certificate of death herein required of him, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than five days nor more than twenty-five days, or by both such fine and imprisonment in the discretion of the court. And if any physician shall wilfully and knowingly make a false certificate of the cause of death in any case, he shall be

guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than twenty-five days nor more than one hundred days, or by both such fine and imprisonment in the discretion of the court. And any physician or midwife, or any other person with responsibility for reporting births, in the order named in section 2530 of this code, who shall refuse or neglect to make out and file the certificate of birth herein required, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars for each offense. And any sexton, undertaker, or other person who shall inter, remove, or otherwise dispose of the body of any deceased person, without the permit herein provided for, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. And any registrar or subregistrar who shall neglect or fail to enforce the provisions of this act in his district, or shall refuse or neglect to perform any of the duties imposed upon him by this act or the rules and regulations of the state registrar, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. And any person or corporation who shall violate any of the provisions of this act, or any of the rules or regulations formulated thereunder by the state registrar, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars.

History: En. Sec. 17, Ch. 25, L. 1907; re-en. Sec. 1780, Rev. C. 1907; re-en. Sec. 2538, R. C. M. 1921.

2539. Registrars charged with duty of enforcing act. Local registrars and subregistrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts, under the supervision of the state registrar. And they shall make an immediate report to the state registrar of any violation of this law coming to their notice by observation, or upon complaint of any person or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local registrars, to the end that all requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the proper county, with the statement of the facts and circumstances, and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith institute and promptly follow up the necessary court proceedings against the parties responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall likewise assist in the enforcement of this act.

History: En. Sec. 18, Ch. 25, L. 1907; re-en. Sec. 1781, Rev. C. 1907; re-en. Sec. 2539, R. C. M. 1921.

CHAPTER 234

STATE EPIDEMIOLOGIST

- Section 2540. State epidemiologist—employment and powers of.
 2541. Duties.
 2542. Qualifications, salary, and traveling expenses.

2540. State epidemiologist—employment and powers of. The state board of health of Montana is hereby authorized and empowered to employ a competent epidemiologist, who shall be known as the state epidemiologist, and shall have the powers of a deputy state health officer under the direction of the secretary of the state board of health of Montana, and be subject to the control of said board.

History: En. Sec. 1, Ch. 76, L. 1919; re-en. Sec. 2540, R. C. M. 1921.

2541. Duties. The duties of the state epidemiologist shall be to study the causes and prevalence of diseases in the state of Montana, to take the proper steps to check such diseases, and to assist the local and county health officers in the suppression of these diseases, and perform such other duties as the state board of health may direct.

History: En. Sec. 2, Ch. 76, L. 1919; re-en. Sec. 2541, R. C. M. 1921.

2542. Qualifications, salary, and traveling expenses. The state epidemiologist shall be a regularly qualified physician and surgeon, and shall hold office at the discretion of the state board of health of Montana; he shall devote his whole time to the duties of the office, and shall receive as compensation for his services such salary as may be fixed by the state board of health of Montana, not in excess of three hundred and fifty dollars per month, together with his reasonable and necessary travel and subsistence expense while actually traveling in the state on business of his office.

History: En. Sec. 3, Ch. 76, L. 1919; re-en. Sec. 2542, R. C. M. 1921.

CHAPTER 235

STATE BOARD OF ENTOMOLOGY—EXTERMINATION OF
TICK-BEARING RODENTS

- Section 2543. Creation and membership of board of entomology.
 2544. Secretary of board.
 2545. Compensation and expenses of members of board.
 2546. Duties of board.
 2547. Eradication of diseases transmitted by insects.
 2548. Rules, regulations, and quarantine.
 2549. Regulations subject to approval of board of health.
 2550. Publication and circulation of rules and regulations.
 2551. Penalty for violation of rules and regulations.
 2552. Extermination of tick-bearing rodents—definition of terms.
 2553. Establishment of control districts.
 2554. Regulations for the extermination of rodents.
 2555. Appointment of agents for purposes of extermination—powers and duties of agents and members of board of entomology.
 2556. Agents to be under supervision of board of entomology—notice to owner of animals in inclosed fields and to occupants of dwellings—records.
 2557. Compensation of agents—maximum expense against land—duty of county treasurer—appeal to district court.
 2558. Preparation, sale and approval of poison.
 2559. Quarantine of control districts.
 2560. Regulation concerning grazing outside of inclosures within control districts.

- 2561. Penalty for violation of act.
- 2561.1. Authority for county commissioners to appoint agents.
- 2561.2. Rocky mountain spotted fever control fund—levy—use of funds.
- 2561.3. Report of agents—compensation.
- 2561.4. Commissioners may purchase materials.
- 2561.5. "Rodents" defined.
- 2561.6. Repealing clause—supplemental nature of act.

2543. Creation and membership of board of entomology. There is hereby created the Montana state board of entomology, which shall be composed of the state entomologist, the secretary of the state board of health, and the state veterinarian.

History: En. Sec. 1, Ch. 120, L. 1913; re-en. Sec. 2543, R. C. M. 1921.

2544. Secretary of board. The secretary of the state board of health shall be chairman of said board, and the state entomologist shall be secretary.

History: En. Sec. 2, Ch. 120, L. 1913; re-en. Sec. 2544, R. C. M. 1921.

2545. Compensation and expenses of members of board. None of the members of said board shall receive any compensation other than that already allowed by law, except that the actual expenses of members while engaged in the duties incident to the work of said board shall be paid out of the appropriation made to carry on the work of said board.

History: En. Sec. 3, Ch. 120, L. 1913; re-en. Sec. 2545, R. C. M. 1921.

2546. Duties of board. It shall be the duty of said board to investigate and study the dissemination by insects of diseases among persons and animals, said investigation having for its purpose the eradication and prevention of such diseases.

History: En. Sec. 4, Ch. 120, L. 1913; re-en. Sec. 2546, R. C. M. 1921.

2547. Eradication of diseases transmitted by insects. Said board shall take steps to eradicate and prevent the spread of Rocky Mountain tick fever, infantile paralysis, and all other infectious or communicable diseases that may be transmitted or carried by insects.

History: En. Sec. 5, Ch. 120, L. 1913; re-en. Sec. 2547, R. C. M. 1921.

2548. Rules, regulations, and quarantine. Said board shall have authority to make and prescribe rules and regulations, including the right of quarantine, over persons and animals in any district of infection, and shall have the right to designate and prescribe the treatment for domestic animals to prevent the spread of such diseases; but said board shall not have the right to prescribe or regulate the treatment given to any person suffering from any infectious or communicable disease.

History: En. Sec. 6, Ch. 120, L. 1913; re-en. Sec. 2548, R. C. M. 1921.

2549. Regulations subject to approval of board of health. All rules and regulations of the state board of entomology shall be subject to approval by the state board of health.

History: En. Sec. 7, Ch. 120, L. 1913; re-en. Sec. 2549, R. C. M. 1921.

2550. Publication and circulation of rules and regulations. The board shall publish in printed form all rules and regulations which shall be adopted by said board for the eradication and control of diseases of any

kind, and such rules and regulations shall be circulated among the residents of every district affected thereby.

History: En. Sec. 8, Ch. 120, L. 1913; re-en. Sec. 2550, R. C. M. 1921.

2551. Penalty for violation of rules and regulations. Any person who shall violate any of the rules or regulations of the state board of entomology shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not in excess of one hundred dollars, or by imprisonment in the county jail for any period not exceeding thirty days, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 120, L. 1913; re-en. Sec. 2551, R. C. M. 1921.

2552. Extermination of tick-bearing rodents—definition of terms. The word "owner" as used in this act shall be construed to include both the singular and plural, as the case may be, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any corporation, company, society, or association, within the scope of his employment of office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the other person. The words "control district" as used in this act shall mean only such control districts of the state board of entomology as have been or may be specifically established for the control or eradication of any tick transmitting Rocky Mountain spotted fever. The words "other rodents" as used in this act shall be construed to include all rodents, other than the Columbian ground-squirrel, that are hosts of any stage of a tick transmitting Rocky Mountain spotted fever. The words "domestic animals" as used in this act shall be construed to include cows, horses, mules, asses, sheep, goats, and hogs.

History: En. Sec. 1, Ch. 27, L. 1919; re-en. Sec. 2552, R. C. M. 1921.

2553. Establishment of control districts. The state board of entomology may, from time to time and whenever it deems it necessary so to do, create and establish control districts for the extermination of the Rocky Mountain spotted-fever tick. Such control districts shall be created and established by a written order of the board, which shall particularly define the boundaries of such districts.

History: En. Sec. 2, Ch. 27, L. 1919; re-en. Sec. 2553, R. C. M. 1921.

2554. Regulations for the extermination of rodents. The state board of entomology is hereby empowered to make such regulations as it may deem necessary, requiring the owners of land in any control district to poison or otherwise kill and exterminate the Columbian ground-squirrel or other rodents, and such regulations shall specify the Columbian ground-squirrel or other rodents to be destroyed, as well as the number of times each year, the period or periods during which, the means by which, and the control district or districts in which such poisoning or otherwise killing and exterminating of the Columbian ground-squirrel or other rodents shall be accomplished; and the secretary of said board shall cause all such regulations to be published in one or more of the newspapers circulated in

the county or counties concerned during two weeks immediately following their adoption by said board.

History: En. Sec. 3, Ch. 27, L. 1919; re-en. Sec. 2554, R. C. M. 1921.

2555. Appointment of agents for purposes of extermination—powers and duties of agents and members of board of entomology. Upon the establishment of one or more control districts within any county in Montana, the county commissioners of such county are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be to poison or otherwise kill and exterminate the Columbian ground-squirrel or other rodents within the limits of such control districts, and said county commissioners are further authorized and empowered to pay out of the general fund of the county the per diem of the person or persons so appointed, and all other expenses in connection with the killing and extermination of such Columbian ground-squirrel or other rodents. Any person so appointed is hereby empowered and directed to perform such poisoning or otherwise killing and exterminating of the Columbian ground-squirrel or other rodents as the state board of entomology may specify, provided the owner shall refuse or neglect to do so when so directed in the regulations of the state board of entomology, or shall refuse or neglect to do so within the period specified by the regulations of said board, or provided such work has not been performed in a thorough and efficient manner. Any person so appointed is further empowered and directed to enter upon any farm, grounds, or premises, a railroad right of way, or any other parcel of land, for the purpose of determining whether or not the Columbian ground-squirrel or other rodents are present, or for the purpose of killing and exterminating the Columbian ground-squirrel or other rodents, or to determine whether or not the Columbian ground-squirrel or other rodents have been poisoned or otherwise killed and exterminated, in accordance with the provisions of this act and the regulations of the state board of entomology. It is further provided that each member of the state board of entomology, and each of its duly authorized representatives and employees, are similarly empowered to enter upon any farm, grounds, or premises, a railroad right of way, or any other parcel of land at any time, for each and all of the purposes specified in this act. When an owner has neglected or refused to poison, kill, or otherwise exterminate the Columbian ground-squirrel or other rodents as required by the provisions of this act and the regulations of said board, or has not done so in a thorough and efficient manner, the secretary of the state board of entomology, or his duly authorized representative, shall notify such owner that such poisoning or otherwise killing and exterminating of the Columbian ground-squirrel or other rodents will be performed at the owner's expense under the direction of said board, as provided in this act, and such notice shall be mailed to the last known address of such owner, and, in case of a railroad right of way, shall be delivered to the nearest station agent.

History: En. Sec. 4, Ch. 27, L. 1919; re-en. Sec. 2555, R. C. M. 1921.

2556. Agents to be under supervision of board of entomology—notice to owner of animals in inclosed fields and to occupants of dwellings—records. Any person or persons appointed for the purpose of poisoning

or otherwise killing and exterminating the Columbian ground-squirrel or other rodents, as provided for in the preceding section, shall perform such work under the direction of the state board of entomology or its duly authorized representative in the county concerned; and it shall be the duty of any such person, or of any duly authorized representative or employee of said board, to give the owner or person in charge of any domestic animals which are pastured on the fenced land on which he is empowered to lay out poison or kill and exterminate the Columbian ground-squirrel or other rodents, at least forty-eight hours' notice in writing before laying out such poison, and to notify the owner or occupant of any dwelling or farmhouse, before laying out poison for the above purpose within twenty rods of such dwelling or farmhouse. He shall further keep such records of infestation by the Columbian ground-squirrel or other rodents as may be directed by the state board of entomology or its duly authorized representative, and shall keep an accurate record of the work performed on each parcel of land on which such person has poisoned or otherwise killed and exterminated the Columbian ground-squirrel or other rodents, specifying therein the kind of rodents so poisoned or otherwise killed and exterminated, the number of hours of labor required therefor, the date or dates during which, and a description of the land on which such labor was performed, together with the amount of poison or other material used, and shall transmit two sworn copies of such records to the secretary of the state board of entomology or his duly authorized representative in the county concerned, and the latter shall, on or before the first day of August of each year, transmit one copy thereof, on which is computed the total expense incurred on each parcel of land, to the county treasurer.

History: En. Sec. 5, Ch. 27, L. 1919; re-en. Sec. 2556, R. C. M. 1921.

2557. Compensation of agents—maximum expense against land—duty of county treasurer—appeal to district court. Any person or persons appointed for the purpose of poisoning or otherwise killing and exterminating the Columbian ground-squirrel or other rodents, as provided for in section 2555, shall receive as compensation not to exceed the sum of three dollars and fifty cents per day of eight hours for labor performed in carrying out the provisions of this act, and such amount shall be paid by the county concerned out of its general fund. The maximum charge against any parcel of land shall not be greater for any one treatment than at the rate of eight dollars per one hundred and sixty acres. Whenever under the provisions of this act or of the regulations of the state board of entomology any money is expended by a county for the purpose of poisoning or otherwise killing and exterminating the Columbian ground-squirrel or other rodents from any parcel of land, the county treasurer of such county shall notify the owner of such land in writing of the amount so expended. Said notice shall be mailed to the last known address of such owner, and if such owner shall fail to pay the amount so expended by the county within thirty days of the time such notice is sent, then, and in that event, the county treasurer shall add the amount so expended to the taxes upon said property, and shall collect the same as provided by law for the collection of taxes for state and county purposes,

except that such owner may, within thirty days from the time such notice is sent, appear before the county commissioners and show cause why such sum should not be paid; provided, however, that if such owner shall feel aggrieved by the decision of the county commissioners, such owner may appeal to the district court, and such appeal shall be perfected and prosecuted in the same manner as appeal in justice courts.

History: En. Sec. 6, Ch. 27, L. 1919; re-en. Sec. 2557, R. C. M. 1921.

2558. Preparation, sale, and approval of poison. In any county concerned, poison for the killing and exterminating of the Columbian ground-squirrel or other rodents shall be prepared by the secretary of the state board of entomology or his duly authorized representative, and shall be sold by him or his agents at cost to any owner or occupant of land in any control district; and it is further provided that the secretary of the state board of entomology or his duly authorized representative shall also prepare or approve all poison used by persons authorized under this act to lay out poison on lands, the owners of which shall refuse or neglect to poison or otherwise kill and exterminate the Columbian ground-squirrel or other rodents as directed by the regulations of the state board of entomology.

History: En. Sec. 7, Ch. 27, L. 1919; re-en. Sec. 2558, R. C. M. 1921.

2559. Quarantine of control districts. Between March 1st and July 15th of each year, each control district shall be held to be a quarantined area. Owners of domestic animals shall be prohibited from taking or moving such animals into or out of any quarantined control district, or from allowing such domestic animals to wander into or out of any quarantined control district; provided, that such domestic animals may be moved into or out of such quarantined control district under permits issued by the secretary of the state board of entomology or by his duly authorized representative, except that no permit so issued shall be effective for animals upon which a quarantine has been placed by the livestock sanitary board; and provided, further, that animals ridden under the saddle or driven in harness or under yoke shall not be subject to this quarantine.

The secretary of the state board of entomology or his duly authorized representative shall be required to satisfy himself that domestic animals are free of ticks before issuing to the owner a permit allowing the removal into or out of quarantined district of such domestic animals.

History: En. Sec. 8, Ch. 27, L. 1919; re-en. Sec. 2559, R. C. M. 1921.

2560. Regulations concerning grazing outside of inclosures within control districts. The state board of entomology is hereby authorized and empowered to make regulations for the purpose of prohibiting or of regulating and controlling the grazing of domestic animals on unfenced land and roadsides and country roads within the limits of any control district established by said board.

History: En. Sec. 9, Ch. 27, L. 1919; re-en. Sec. 2560, R. C. M. 1921.

2561. Penalty for violation of act. Any owner of domestic animals who shall violate any provision of the two preceding sections, or any regulation of the state board of entomology made in conformity therewith, shall be guilty of a misdemeanor, and shall be fined in any sum not

greater than one hundred dollars or imprisoned in the county jail for any period not exceeding thirty days, or both such fine and imprisonment may be imposed.

History: En. Sec. 10, Ch. 27, L. 1919; re-en. Sec. 2561, R. C. M. 1921.

2561.1. Authority for county commissioners to appoint agents. The board of county commissioners of any county of this state, when there are within the limits of such county any lawfully established control districts of the state board of entomology for the control of Rocky Mountain spotted fever are hereby authorized and empowered, upon the request of said state board of entomology or its duly authorized representative in such county, to appoint any suitable person or persons, whose duty it shall be to shoot, poison, trap or to otherwise catch or kill rodents within the limits of such control districts, and any person so appointed is hereby empowered and directed to enter upon any farm, railroad right of way, grounds or premises infested with rodents and located within the limits of such control districts, and to shoot, poison, trap or to otherwise catch or kill such rodents. It is further provided that any person so appointed shall work under the direction of the state board of entomology or its duly authorized representative in any county concerned.

History: En. Sec. 1, Ch. 24, L. 1923.

2561.2. Rocky mountain spotted fever control fund—levy—use of fund. The board of county commissioners in any county in which there are any such control districts may create a "rocky mountain spotted fever control fund," either by appropriating money from the general fund of the county or at any time fixed by law for the levy and assessment of taxes, levy a tax not exceeding one-half mill on the dollar of assessed valuation, upon all property in the county, the proceeds of which shall be used solely for the purpose of providing for the shooting, poisoning, trapping or otherwise catching or killing of rodents in said county. The fund to be provided, to be raised in accordance with this section, shall be denominated the "rocky mountain spotted fever control fund," and shall be kept separate and distinct by the county treasurer, and shall be expended by the board of county commissioners, and at such times and at any place in the county, and in such manner as is desired by the state board of entomology to secure the abatement or extermination of rodents which are hosts of any tick transmitting rocky mountain spotted fever.

History: En. Sec. 2, Ch. 24, L. 1923.

2561.3. Report of agents—compensation. Any person appointed by the board of county commissioners under the provisions of this act shall at the end of each month, make a sworn statement to the county of the time expended in shooting, poisoning, trapping or otherwise catching and killing rodents, exclusive of time going to and returning from work, and such person shall be paid at the rate not to exceed three dollars and fifty cents (\$3.50) per day of eight hours.

History: En. Sec. 3, Ch. 24, L. 1923.

2561.4. Commissioners may purchase materials. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poisons, traps or other materials as may be necessary

to carry out the provisions of this act to shoot, poison, trap or otherwise catch or kill rodents in any rocky mountain spotted fever control districts of the state board of entomology within the limits of the county concerned.

History: En. Sec. 4, Ch. 24, L. 1923.

2561.5. "Rodents" defined. The term "rodents" as used within the limits of this act shall include such rodent or rodents as are known to be hosts of any tick which transmit rocky mountain spotted fever and are required to be exterminated by those regulations of the state board of entomology which are in force in any county concerned in the year during which the appropriation shall be made.

History: En. Sec. 5, Ch. 24, L. 1923.

2561.6. Repealing clause—supplemental nature of act. All acts or parts of acts in conflict herewith are hereby repealed; provided, however, that except as herein otherwise specified this act shall be construed as supplemental to and a part of all laws of this state relating to the control of rocky mountain spotted fever.

History: En. Sec. 6, Ch. 24, L. 1923.

CHAPTER 236

CONTROL OF VENEREAL DISEASES

- Section 2562. Venereal diseases—authority of state board to cooperate with federal authorities in suppression.
- 2563. Acceptance and disbursement of federal moneys.
 - 2564. Venereal diseases dangerous to public health.
 - 2565. Record of venereal cases to be kept—reporting cases.
 - 2566. Examination and detention of suspects—quarantine—cooperation of local health officers.
 - 2567. Isolation hospitals.
 - 2568. Pay patients.
 - 2569. Examination and treatment of prisoners.
 - 2570. Quarantine of infected persons.
 - 2571. Instructions of patients in disease.
 - 2572. Duty of physician or other person consulted concerning disease.
 - 2573. Druggists and unlicensed persons prohibited from prescribing—duty of druggists.
 - 2574. Certificates of freedom from disease.
 - 2575. Inaccessibility of records to public.
 - 2576. Rules and regulations for the control of venereal diseases.
 - 2577. Penalty for violation of act or regulations.

2562. Venereal diseases—authority of state board to co-operate with federal authorities in suppression. For the purpose of the prevention, control, and treatment of venereal diseases, the state board of health shall have authority to co-operate in this state with the division of venereal diseases of the bureau of public health service created by subchapter XV of chapter 143 of the act of Congress of July 9, 1918, appropriating money for the United States army, and giving aid to the several states in the prevention, control, and treatment of venereal diseases.

History: En. Sec. 1, Ch. 86, L. 1919; re-en. Sec. 2562, R. C. M. 1921.

2563. Acceptance and disbursement of federal moneys. The state treasurer is hereby authorized to accept, under the conditions of said act of Congress, and to disburse under the direction of the state board of health, all moneys received by the state of Montana under said subchapter XV of chapter 143 of said act of Congress, or otherwise allotted

and paid to the state of Montana by the federal government for the prevention, control, and treatment of venereal diseases, and all moneys appropriated under this act.

History: En. Sec. 2, Ch. 86, L. 1919; re-en. Sec. 2563, R. C. M. 1921.

2564. Venereal diseases dangerous to public health. That syphilis, gonorrhoea, and chaneroid, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for anyone infected with these diseases, or any of them, to expose another person to infection.

History: En. Sec. 1, Ch. 106, L. 1919; re-en. Sec. 2564, R. C. M. 1921.

References

In re Caselli, 62 M 201, 202, 240 P 364.

2565. Record of venereal cases to be kept—reporting cases. Any physician or other person who makes a diagnosis in or treats a case of syphilis, gonorrhoea, or chaneroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall keep a record thereof, which shall show the name and address or the office number, age, sex, color, and occupation of the diseased person, and the date of onset of the disease, and the probable source of infection. Every name entered in such record shall be assigned a number, commencing with No. 1 and continuing in numerical order, and shall report such case immediately in writing to the local or county health officer, giving the number assigned to such diseased person, together with the probable source of infection; provided, that the name and address shall not be given in such report, except as hereinafter specifically provided. Said report shall be inclosed in a sealed envelope and sent to the local or county health officer, who shall report weekly on the prescribed form to the state board of health all cases reported to him.

History: En. Sec. 2, Ch. 106, L. 1919; re-en. Sec. 2565, R. C. M. 1921.

References

In re Caselli, 62 M 201, 202, 240 P 364.

2566. Examination and detention of suspects—quarantine—co-operation of local health officers. State, county, and local health officers, or their authorized deputies, within their respective jurisdictions, are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known, to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. It shall be the duty of all local, county, and state health officers, or their authorized deputies, within their respective jurisdictions, to investigate sources of infection of venereal disease, to co-operate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

History: En. Sec. 3, Ch. 106, L. 1919; re-en. Sec. 2566, R. C. M. 1921.

Operation and Effect

The legislature under its police power may enact laws authorizing the establishment of quarantine regulations and requiring the detention of persons affected with contagious diseases dangerous to the public health without resort to a preliminary judicial proceeding to determine the character of the disease and the facts constituting the danger to public health. In re Caselli, 62 M 201, 202, 204 P 364.

Id. A person placed in quarantine because affected with a communicable disease may, on habeas corpus, challenge the right of the authorities to continue his detention if the facts upon which the order was made no longer exist.

Id. The provisions of the fourteenth amendment to the constitution of the United States, and of sections 6 and 7 of article III of the state constitution, to the effect that no person may be deprived of his liberty without due process of law, have no application to the case of one detained in quarantine because affected with a dangerous communicable disease.

Id. Evidence showing that a woman had been plying her trade as a prostitute within a short time prior to her arrest by the county health officer under chapter 106, laws of 1919, and detention in quarantine on the ground that she was affected with gonorrhea, was a constant associate of prostitutes, etc., held sufficient to warrant her detention until such time as it was safe to allow her to go at large.

2567. Isolation hospitals. The county board of health of each county shall provide an isolation hospital for the care and treatment of all persons within the county suffering from venereal diseases, and shall make all necessary rules and regulations for the conduct and management thereof; provided, however, that the county board of health of any county may, in its discretion, if no isolation hospital has been established in such county, contract for the care and treatment of persons suffering from said diseases, with any county of the state that maintains an isolation hospital for the care and treatment of such diseases, or may contract with any private institution for the care and treatment of any such patients.

History: En. Sec. 4, Ch. 106, L. 1919; re-en. Sec. 2567, R. C. M. 1921.

References

In re Caselli, 62 M 201, 202, 240 P 364.

2568. Pay patients. Every person who is committed to, detained, or treated in such isolation hospitals, and who is financially able, shall be required to pay all expenses for care and treatments while detained in such hospital, and the county board of health is authorized to maintain a civil action in the name of the county to recover therefor.

History: En. Sec. 5, Ch. 106, L. 1919; re-en. Sec. 2568, R. C. M. 1921.

2569. Examination and treatment of prisoners. All persons who shall be confined or imprisoned in any state, county, or city prison in the state shall be examined for, and if infected, treated for venereal diseases by the health authorities or their deputies. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital, wherein all persons who may be confined or imprisoned in any such prison, and who are infected with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of section 2566 shall be isolated and treated at public expense until cured: or, in lieu of such isolation, any of such persons may, in the discretion of the local, county, or state health officer, be required to report for treatment to a licensed physician, or submit to treatment provided at public

expense as provided in section 2567. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

History: En. Sec. 6, Ch. 106, L. 1919; re-en. Sec. 2569, R. C. M. 1921.

2570. Quarantine of infected persons. Local and county health officers are authorized and directed to quarantine persons who have, or who, after examination, are reasonably suspected of having syphilis, gonorrhea, or chancreoid, whenever in the opinion of said local or county health officer, or the state board of health or its secretary, quarantine is necessary for the protection of the public health. In establishing quarantine the health officer shall designate and define the limits of the area in which the person known to have, or reasonably suspected of having, syphilis, gonorrhea, or chancreoid, and his or her immediate attendant are to be quarantined, and no other person than the attending physician shall enter or leave the area of quarantine without the permission of the local or county health officer. No one but the local, county or state health officer shall terminate said quarantine, and this shall not be done until the diseased person has become non-infectious, as determined by the local, county, or state health officer or his authorized deputy, through the clinical examination and necessary laboratory tests, or until permission has been given by the state board of health or its secretary.

History: En. Sec. 7, Ch. 106, L. 1919; re-en. Sec. 2570, R. C. M. 1921.

Operation and Effect

The legislature under its police power may enact laws authorizing the establishment of quarantine regulations and requiring the detention of persons affected with contagious diseases dangerous to the public health without resort to a preliminary judicial proceeding to determine the character of the disease and the facts constituting the danger to public health. In re Caselli, 62 M 201, 202, 204 P 364.

Id. A person placed in quarantine because affected with a communicable disease may, on habeas corpus, challenge the right of the authorities to continue his detention if the facts upon which the order was made no longer exist.

Id. The provisions of the fourteenth amendment to the constitution of the United States, and of sections 6 and 7 of article III of the state constitution, to the effect that no person may be deprived of his liberty without due process of law, have no application to the case of one detained in quarantine because affected with a dangerous communicable disease.

Id. Evidence showing that a woman had been plying her trade as a prostitute within a short time prior to her arrest by the county health officer under chapter 106, laws of 1919, and detention in quarantine on the ground that she was affected with gonorrhea, was a constant associate of prostitutes, etc., held sufficient to warrant her detention until such time as it was safe to allow her to go at large.

2571. Instruction of patients in disease. It shall be the duty of every physician, and every other person who examines or treats a person having syphilis, gonorrhea, or chancreoid, to instruct such person in measures for preventing the spread of such diseases, and inform such person of the necessity for treatment until cured, and to hand such person a copy of the circular of information obtainable for this purpose from the state board of health.

History: En. Sec. 8, Ch. 106, L. 1919; re-en. Sec. 2571, R. C. M. 1921.

2572. Duty of physician or other person consulted concerning disease. When a person applies to a physician or other person for the diagnosis or treatment of syphilis, gonorrhea, or chancreoid, it shall be the duty of the physician or person so consulted to inquire of and ascertain from the per-

son seeking such diagnosis or treatment, whether such person has theretofore consulted with or has been treated by any other physician or person, and, if so, to ascertain the name and address of the physician or person last consulted. It shall be the duty of the applicant for diagnosis or treatment to furnish this information, and a refusal to do so or a falsification of the name and address of such physician or person consulted by such applicant shall be deemed a violation of these regulations. It shall be the duty of the physician or other person whom the applicant consults to notify the physician or other person last consulted of the change of advisers. Should the physician or person previously consulted fail to receive such notice within ten days after the last date upon which the patient was instructed by him to appear, it shall be the duty of such physician or person to report to the local or county health officer the name and address of such venereally diseased person.

If an attending physician or other person knows or has good reason to suspect that a person having syphilis, gonorrhea, or chaneroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local or county health officer of the name and address of the diseased person, and the essential facts in the case.

History: En. Sec. 9, Ch. 106, L. 1919; re-en. Sec. 2572, R. C. M. 1921.

References

In re Caselli, 62 M 201, 202, 240 P 364.

2573. Druggists and unlicensed persons prohibited from prescribing—duty of druggists. No druggist or other person, not a physician licensed under the laws of the state, shall prescribe or recommend to any person any drugs, medicines, or other substances to be used for the cure or alleviation of gonorrhea, syphilis, or chaneroid, or shall compound any drugs or medicines other than proprietary for said purpose, from any written formula or order not written for the person for whom the drugs or medicines are compounded, and not signed by a physician licensed under the laws of the state. All druggists are required to keep a record of the names and addresses of all persons to whom proprietary or patent medicines, commonly or presumably used in the treatment of venereal diseases, are sold or supplied to, and shall forward a report to the proper health officer at the end of each week, giving the names and addresses of such persons and the remedy sold in each case.

History: En. Sec. 10, Ch. 106, L. 1919; re-en. Sec. 2573, R. C. M. 1921.

2574. Certificates of freedom from disease. Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, providing this rule shall not prevent the issuance of necessary statements of freedom from infectious diseases, written in such form or given under such safeguards that their use in solicitation for sexual intercourse would be impossible. Such certificates shall not be used or exhibited for solicitation for immoral purposes.

History: En. Sec. 11, Ch. 106, L. 1919; re-en. Sec. 2574, R. C. M. 1921.

References

In re Caselli, 62 M 201, 202, 240 P 364.

2575. Inaccessibility of records to public. All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public.

History: En. Sec. 12, Ch. 106, L. 1919; re-en. Sec. 2575, R. C. M. 1921.

2576. Rules and regulations for the control of venereal diseases. The state board of health is hereby empowered and directed to make such rules and regulations as shall, in its judgment, be necessary for the carrying out of the provisions of this act, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of section 2566, and such other rules and regulations, not in conflict with provisions of this act, concerning the control of venereal diseases and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this act, and shall have the force and effect of law.

History: En. Sec. 13, Ch. 106, L. 1919; re-en. Sec. 2576, R. C. M. 1921.

References

In re Caselli, 62 M 201, 202, 240 P 364.

2577. Penalty for violation of act or regulations. Any person who shall violate any of the provisions of this act, or any lawful rule or regulation made by the state board of health, pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by the state, county, or local health officer, pursuant to the authority granted in this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than a year, or by both such fine and imprisonment.

History: En. Sec. 14, Ch. 106, L. 1919; re-en. Sec. 2577, R. C. M. 1921.

CHAPTER 237

PURE FOOD AND DRUG ACT

- Section 2578. Adulterated or misbranded drugs and food—unlawful manufacture or sale.
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2597. Sale of food containing saccharin prohibited.
2598. Food defined.
2599. Penalty for violation of act—disposal of fines.

2578. Adulterated or misbranded drugs and food—unlawful manufacture or sale. It shall be unlawful for any person, persons, firm, or corporation, within this state, to manufacture for sale, within this state sell, offer for sale, or have within his or their possession, with the intent to sell within this state, any drugs or article of food which is adulterated or misbranded within the meaning of this act. The term “drug,” as used in this act, shall include all medicines or preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or animals. The term “food,” as used in this act, shall include all articles used as food, drink, confectionery, or condiment by man or animals, whether simple, mixed or compound.

History: En. Sec. 1, Ch. 130, L. 1911; re-en. Sec. 2578, R. C. M. 1921.

Nature of Action

A charge in a complaint that defendant sold and delivered to plaintiff's husband, for immediate use in his family, including plaintiff, adulterated meat containing “diseased, infected, putrid, decomposed, poisonous acid and animal matter,” sufficiently charged defendant with a violation of the pure food act, and with a breach of duty constituting legal negligence. *Kelley v. John R. Daily Co.*, 56 M 63, 72, 181 P 326.

Id. Liability under the pure food act arises from a violation of the statute, and it is immaterial whether the foundation of an action based upon such violation is laid in negligence or warranty.

Id. The seller of food products is made insurer of their purity, and guilty knowledge on his part is not an ingredient of the offense prohibited; the obligation is personal, and cannot be avoided by showing that the impure food was purchased from a foreign concern and bore the stamp of approval by the government inspectors.

Id. A complaint alleging that, at the time of the sale of impure food by defendant to plaintiff, defendant was engaged in selling at retail, to the public generally,

meat and meat products for human consumption, was sufficient to bring the case within the statute, and disclose the duty defendant owed to the public, including plaintiff, to see that its food products offered for sale were not adulterated within the meaning of such statute.

Id. It is not necessary for a plaintiff to refer to the pure food and drug act in order to recover damages for injuries arising from a violation of it. The courts take judicial notice of the general and public domestic statutes, and they need not be specially pleaded.

Police Regulation

The pure food and drug act is a general police regulation, which recognizes the fact that the sale of adulterated food-stuff is a constant menace to the health of the consuming public, and the duty enjoined by it upon the seller is such that a violation of it can affect the public health only through the individuals who are injuriously affected by partaking of such food. The duty imposed upon the vendor is one which extends to the public considered as a composite of individuals, and if a consumer sustains some special injury by reason of defendant's violation of the act he has a right of action against the latter. *Kelley v. John R. Daily Co.*, 56 M 63, 71, 181 P 326.

2579. What deemed adulterated. For the purposes of this act, an article shall be deemed as adulterated, in case of drugs:

First. When a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, if it differs from the standard strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary, official at the time of investigation; provided, that no drug shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of foods:

First. In the case of confectionery, if it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Second. If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength.

Third. If any substance has been wholly or in part substituted for the article.

Fourth. If any valuable constituent has been wholly or in part abstracted from it.

Fifth. If it contains any proportion of a filthy, diseased, decomposed, putrid, or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal.

Sixth. If it is mixed, colored, coated, polished, powdered, or stained in a manner whereby damage or inferiority is concealed, or whereby it is made to appear better or of greater value than it really is.

Seventh. If it contains any added poisonous or other added deleterious ingredient.

Eighth. If it contains any added antiseptic or preservative substance, except common salt, saltpeter, cane-sugar, beet-sugar, vinegar, spices, or in smoked foods, the natural products of the smoking process, or other harmless preservatives whose use is authorized by the state board of health, and no preservative shall be used in greater quantity than the rules and regulations of the state board of health shall designate.

History: En. Sec. 2, Ch. 130, L. 1911;
re-en. Sec. 2579, R. C. M. 1921.

References

Cited or applied as section 2, chapter 130, laws of 1911, in *Kelley v. John R. Daily Co.*, 56 M 63, 71, 181 P 326.

2580. Adulterated milk prohibited. No person, either by himself or by his servant or agent, or as the servant or agent of another person, shall sell, exchange, or deliver, expose or offer for sale or exchange adulterated milk, or milk to which water or any foreign substance has been added, milk produced from cows which have been fed on fermenting refuse from distilleries, breweries, or sugar factories or stable bedding or barnyard refuse, provided that fermenting pulp fed in conjunction with ground alfalfa and syrup be excepted, or from sick or diseased cows, or as pure milk from which the cream or a part thereof has been removed, or milk collected or kept or handled under conditions which are not cleanly or sanitary, and which do not conform to the rules and regulations of the state board of health made in conformity with the provisions of this act, or milk containing less than eight and one-half per cent. of milk solids, exclusive of fat, and three and twenty-five hundredths per cent. of milk fat, or milk which contains any added color preservative, or as cream, milk containing less than twenty per cent. of milk fat.

History: En. Sec. 3, Ch. 130, L. 1911; re-en. Sec. 2580, R. C. M. 1921.

2581. Butter, cheese, and milk products. No butter, cheese, or other milk product shall be sold or offered for sale in this state unless made from milk, the sale of which is not prohibited under the provisions of the preceding section; provided, that cheese made from skim milk may be sold as "skim cheese" when branded in bold-faced letters not less than one inch in height, plainly stating that said article of food is made from skim milk; and provided, further, that renovated butter or butter made by any other process than that of churning milk, salable under the provisions of the preceding section, shall be branded so as to plainly indicate the method of making such butter and the contents thereof, and to the entire satisfaction of the state board of health.

History: En. Sec. 4, Ch. 130, L. 1911; re-en. Sec. 2581, R. C. M. 1921.

2582. Weights and measures—size of gallon, ounce and pound. In case of food sold by weight or measure, all measures shall be in gallons or fractions thereof, a gallon to contain two hundred and thirty-one cubic inches, and each fraction of a gallon to contain its corresponding fraction of two hundred and thirty-one cubic inches. Where weights or measures are stated in pounds and ounces, they shall be exclusive of the wrapper or other container, and each pound shall contain sixteen ounces, each ounce containing four hundred and thirty-seven and one-half grains. Any person, persons, firm, or corporation selling or offering for sale any article of food as a pound, or any multiple thereof, except by actual weight, the net weight of which is less than sixteen ounces, or the proper multiple thereof to represent the number of pounds sold or offered for sale, and any person, persons, firm, or corporation selling or offering for sale any quantity of food as a gallon, or any fraction thereof, which does not contain two hundred and thirty-one cubic inches net measure, or the fraction thereof represented by the fraction of a gallon offered for sale or sold, shall be guilty of a misdemeanor.

History: En. Sec. 5, Ch. 130, L. 1911; re-en. Sec. 2582, R. C. M. 1921.

2583. Tuberculin test of cattle in dairies. The state veterinarian, either in person or by his deputies, shall tuberculin test all cattle used in and about all dairies in the state of Montana, at least once during each calendar year; and all persons, firms or corporations conducting a dairy in this state shall file with the secretary of the state board of health a certificate for each cow hereafter added to his dairy, which certificate shall be signed by a veterinarian approved by the state board of health, and shall state that such cow has been tuberculin tested by him and found to be free from tuberculosis, and such certificate shall contain a description of such cow, which description shall be sufficiently complete to identify the cow; and any person, firm, or corporation using any cow in his dairy, or keeping any cow on his dairy premises, which has not been tuberculin tested and found free from tuberculosis, shall be guilty of a misdemeanor, and shall be deemed guilty of selling milk from diseased cows. For the purpose of this act, any person shall be deemed as conducting a dairy who offers for sale any milk or cream, or who sells milk or cream to any butter factory, creamery, or other place where milk or milk products are manufactured or sold.

History: En. Sec. 6, Ch. 130, L. 1911; re-en. Sec. 2583, R. C. M. 1921.

2584. Animals slaughtered under unsanitary conditions—unsanitary conditions defined. It shall be unlawful for any person, persons, firm, or corporation to sell within this state, or to have within his or their possession with the intent to sell within this state for human food, the carcass or parts of the carcass of any animal which has been slaughtered, prepared, handled, or kept under unsanitary conditions; and unsanitary conditions shall be deemed to exist whenever and wherever any one or more of the following conditions are found to appear, to-wit: If the slaughter-house is dilapidated or in a state of decay; if the floor or side walls are soaked with decaying blood or other animal matter; if efficient fly screens are not provided; if the drainage of the slaughter-house yard is not efficient; if maggots or filthy pools or hog wallows exist in the slaughter-house yard or under the slaughter-house floor; if the water supply used in connection with the cleaning and preparing of the meat is not pure and uncontaminated; if the hogs are kept in the slaughter-house yard, or fed therein on animal offal, or if the odors of putrification plainly exists in or about the slaughter-house; if carcasses or parts of carcasses are transported from place to place when not covered with clean white cloths, or if kept in unclean or bad smelling refrigerator or refrigerators, or if kept in unclean or foul smelling storerooms. It shall be unlawful for any person, persons, firm, or corporation to have in his or their possession, with intent to sell, the carcass of any animal or fowl which has died from any cause other than being slaughtered in a sanitary manner, or the carcass or part of the carcass of any animal that shows evidence of any disease, or that came from a sick or diseased animal, or the carcass or part of the carcass of any calf that was killed before it had attained the age of four weeks.

History: En. Sec. 7, Ch. 130, L. 1911; re-en. Sec. 2584, R. C. M. 1921.

2585. Repealed—Chapter 189, laws of 1931.

2586. Duty of peace and health officers to seize unwholesome food offered for sale. It shall be the duty of all peace or health officers to seize any animal carcass or parts of carcasses, or any domestic or wild fowl, eggs, game, fish, or other food product found to be unwholesome, and which are intended for sale or offered for sale for human food, or which have been slaughtered or prepared, handled, or kept under unsanitary conditions as herein defined, or as the rules and regulations of the state board of health may designate, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained; and said police judge or said justice of the peace shall issue warrants of arrest for all persons believed to have violated any provision of this act, and said cause shall be tried at an early date thereafter. The said police judge or said justice of the peace shall immediately drench the unwholesome food brought before him with kerosene, and require the owner thereof to immediately dispose of the same in a sanitary manner, or he may, in his discretion, order the unwholesome food rendered into grease and tankage.

History: En. Sec. 7, Ch. 130, L. 1911; re-en. Sec. 2586, R. C. M. 1921.

2587. How term "misbranded" shall be understood. The term "misbranded," as used herein, shall apply to all drugs, or articles of food, or

articles which enter into the composition of food or drugs, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory, or country in which it is manufactured or produced, unless the word "process" or "type," in plain, legible and obvious English print, type, or script immediately follows the state, territory, country, locality, or brand designated. That for the purpose of this act, an article shall be deemed to be misbranded; in the case of drugs:

First. If it be an imitation or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents differing in quality or quantity from the original contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannibis indica, chloral hydrate, acetanilide, phenacetine, antipyrine, or any derivative of any preparation of any such substance contained therein; provided, that said requirements as to statement of contents shall not be operative until on and after January 1, 1912; and provided, further, that the requirements of this section shall not apply to medical prescriptions written by physicians and surgeons, dentists, or veterinary surgeons, nor to extemporaneous preparations dispensed by druggists, nor shall the provisions of this section be construed as prohibiting legally qualified physicians and surgeons, dentists, and veterinary surgeons from administering drugs to patients under their care.

In the case of foods:

First. If it is an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign article when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannibis indica, chloral hydrate, acetanilide, phenacetine, or antipyrine, or any derivative or any preparation of any such substance or substances contained therein; provided, that such statement shall not be required as to articles of food in the hands of wholesalers or retailers on or prior to January 1, 1912.

Third. If in the package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; provided, that an article of food which does not

contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter become known as articles of food, under their own distinctive names and heretofore known to the consumer, and not an imitation of or offered for sale under the distinctive name or brand of another article, if the name be accompanied on the same label or brand with the statement of the place where said article has been manufactured or produced; provided, further, for the purposes of this act, a drug or food shall not be deemed misbranded, marked, labeled, or tagged with the distinctive trade or commercial name heretofore known to the consumer.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly printed on the package in which it is offered for sale; provided, that the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring; and provided, further, that in cases of spirituous liquors the term like substances shall be construed to mean pure distillates of grain, or pure distillates of fruit and grain; and provided, further, that nothing in this act shall be construed as compelling or requiring proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredients to disclose their trade formulas except so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

History: En. Sec. 8, Ch. 130, L. 1911; re-en. Sec. 2587, R. C. M. 1921.

2588. When dealer not to be prosecuted—guaranties. No dealer shall be prosecuted under the provisions of this act for selling or offering for sale any article of food or drugs, as defined herein, when the same is found to be adulterated or misbranded within the meaning of this act, in the original, unbroken package in which it was received by said dealer, when he can establish a guarantee, signed by the wholesaler, jobber, or agent, or other party residing in the United States from whom he purchased such article, or if a proper printed guarantee of the manufacturer with his address be upon the package or container, to the effect that the same is not adulterated or misbranded in the original unbroken package in which the said article was received by said dealer, within the meaning of this act, designating it, or within the meaning of the food and drug act, enacted by the senate and house of representatives of the United States of America in Congress assembled June 30, 1906. Said guarantee to afford protection must contain the name and address of the party or parties making the sale of such article to such dealer, or of the manufacturer thereof as herein specified, and in such case said party shall be amenable to prosecution, fines, and other penalties which would attach in due course to the dealer under the provisions of this act.

History: En. Sec. 9, Ch. 130, L. 1911; re-en. Sec. 2588, R. C. M. 1921.

2589. License from state board of health for manufacturers and purveyors of food and drinks. It shall be unlawful for any person, persons,

firm, or corporation to conduct any restaurant, cafe, lunch counter, dining-car, manufacturing bakery, manufacturing confectionery, meat market, cannery, soda fountain, ice cream parlor, soft drink establishment or bottling works, without having a license issued by the state board of health of Montana; provided, that no license shall be required for a dining-room, cafe or lunch counter that is operated in connection with and under the same management as a hotel that holds a license from the state board of health, or that is subject to the payment of a license fee under the provisions of chapter 36, session laws of 1919 (2485-2498), an annual fee of two dollars shall be required for each license. Licenses shall be made to expire on the last day of December of the current year in which they are issued. Applications for licenses shall be made on blanks supplied by the state board of health. No license shall be issued to any place of business that is conducted in a grossly unsanitary manner.

If as a result of inspection by an authorized representative of the state board of health, it is found that any licensed place of business is not conducted within a reasonable degree of compliance with the rules and regulations of the state board of health, the license may be canceled by the secretary of the state board of health; provided, that any licensee whose license is so canceled shall be entitled to a hearing before the state board of health to show cause if any, why his license should not be canceled. In such case licensee must make written request to the secretary of the state board of health for a hearing within five days after notice has been received that his license has been canceled.

Fees collected by the state board of health for licenses issued shall be transmitted to the state treasurer and placed to the credit of the general fund as provided for by law.

History: En. Sec. 10, Ch. 130, L. 1911; amd. Sec. 1, Ch. 175, L. 1921; re-en. Sec. 2589, R. C. M. 1921.

Failure to Procure License as a Defense

Offered evidence to show that plaintiff did not have the license required by this section authorizing him to conduct his restaurant business, at the time he was evicted by his landlord before expiration of the lease, was immaterial, since the

fact alone would not tend to prove that he could not have procured one upon placing the premises in a sanitary condition. *Quong et al. v. McEvoy et al.*, 70 M 99, 105, 224 P 266.

References

State v. Hennessy Co., 71 M 301, 307, 230 P 64; *State v. Yale Oil Corp. of South Dakota*, 88 M 506, 510, 295 P 255.

2590. Omitted.

2591. Duties and powers of state board of health. It shall be the duty of the state board of health to enforce the provisions of this act. They shall, through their secretary and through local and county health officers, make all necessary investigations and inspections in reference to all food and drugs, and for this purpose the state, county, and local health officers shall be food and drug inspectors for their respective districts; each local and county health officer shall make regular inspections as the rules and regulations of the state board of health may direct, and such special inspections as said board of health may from time to time order made, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the state board of health

may direct. Should any health officer fail, neglect, or refuse to make any such regular or special inspection, or fail to make any report in the manner and at the time designated by the state board of health, or should he make a false report of any condition that may exist within his district, the state board of health shall notify the mayor of the city or town, in the case of a local health officer, or the chairman of the board of county commissioners, in the case of a county health officer, of such negligence on the part of such health officer, and said state board of health, may, in their discretion, order the removal from office of such delinquent health officer, and when such an order is issued by the state board of health, the mayor of the city or town, in the case of a local health officer, or the board of county commissioners, in the case of a county health officer, shall immediately declare the office of health officer vacant and shall appoint another competent and legally qualified physician and surgeon to fill the office.

The state board of health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state, and shall adopt and promulgate rules and regulations relative to the sanitary management of all places designated in section 2589 of this code, and they shall adopt rules regulating the minimum standards for foods and drugs, defining specific adulterations and declaring proper methods of collecting and examining all drugs and articles of food, and the violation of any such rule or regulation shall be punished on conviction, as set forth in section 2594 of this code; provided, that such rules and regulations made and promulgated by the state board of health shall at all times conform to the rules and regulations of the national food and drug commission made under the food and drugs act of June 30, 1906.

It shall be the duty of the state board of health, at the instance of any person, firm, or corporation, or on their own volition, to examine, analyze, and determine the purity, branding, and labeling of any food or drug placed upon the market or offered for sale in the state of Montana, and if found legal, they shall certify to the individual, firm, or corporation manufacturing, selling, or offering for sale such food or drug, that such food or drug is legal.

No prosecution shall follow until such time as the individual, firm, or corporation has been notified by the state board of health wherein any food or drug fails to meet the requirements of the rules and regulations of the state board of health, and such time to remedy the failure as the state board of health may rule.

All state, local, and county health officers are hereby authorized to enter any premises where any article of food or drug is sold, offered for sale, manufactured, cooked, stored, or treated in any way, for the purpose of inspecting such premises and the manner in which such food or drug is handled.

History: En. Sec. 11, Ch. 130, L. 1919; re-en. Sec. 2591, R. C. M. 1921.

2592. Samples of food and drugs for analysis. Every person offering or exposing for sale or delivering to a purchaser any drug or article of food included in the provisions of this act, shall furnish to any inspector or other officer or agent appointed hereunder, who shall apply to him for the pur-

pose and shall tender to him the value of the same, a sample sufficient for analysis of any drug or article of food which is in his possession. Whoever hinders, obstructs, or in any way interferes with an inspector, or other officer or agent appointed hereunder, in the performance of his duty, shall, upon conviction, be fined in any sum not less than ten dollars nor more than one hundred dollars.

History: En. Sec. 12, Ch. 130, L. 1919; re-en. Sec. 2592, R. C. M. 1921.

2593. Director of food and drug division—analyses. The director of the food and drugs division of the state board of health shall be a qualified chemist and all chemical analyses required in the enforcement of the food and drugs act shall be made in the food and drugs laboratory at Helena and by or under the direction of the said chemist.

History: En. Sec. 13, Ch. 130, L. 1911; re-en. Sec. 2593, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1929.

2594. Violations of act—penalties. Except as elsewhere provided in this act, any person, persons, firm, or corporation violating any of the provisions of this act shall, upon conviction of the first offense, be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars; for the second offense, by a fine of not less than fifty dollars nor more than two hundred dollars; and for the third and subsequent offenses, by a fine of not less than one hundred dollars and imprisonment in the county jail for not less than thirty nor more than ninety days, and all fines collected for violations of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the state board of health maintenance fund.

History: En. Sec. 15, Ch. 130, L. 1911; re-en. Sec. 2594, R. C. M. 1921.

2595. Prosecutions by county attorney—evidence. Whenever the state board of health shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rule or regulation made by the state board of health in conformity with the provisions of this act, and the report of the chemist of the food and drugs division of the state board of health, stating that any drug or food examined by him is found to be impure or below the standard required by the provisions of this act, or the rules and regulations of the state board of health, shall be taken as presumptive evidence of the impurity of such drug or article of food.

History: En. Sec. 16, Ch. 130, L. 1911; re-en. Sec. 2595, R. C. M. 1921; amd. Sec. 2, Ch. 73, L. 1929.

2596. Limit to rules promulgated by state board of health. No rules or regulations shall be promulgated by the state board of health under the provisions of this act, which do not conform to the rules and regulations promulgated or to be hereafter promulgated by the national government under the food and drugs act of Congress of June 30, 1906; and no article of foods or drugs shall be deemed to be adulterated, misbranded, or otherwise subject to the provisions of this act, when such article of food or drugs

conforms to the rules and regulations of the United States government under any national act or acts.

History: En. Sec. 17, Ch. 130, L. 1911; re-en. Sec. 2596, R. C. M. 1921.

2597. Sale of food containing saccharin prohibited. It shall be unlawful for any person, persons, firm or corporation within the state of Montana knowingly, to manufacture, sell, offer for sale, or have within his or their possession with the intent to sell, any beverage or article of food which contains saccharin.

History: En. Sec. 1, Ch. 256, L. 1921; re-en. Sec. 2597, R. C. M. 1921.

2598. Food defined. The term "food," as used in this act shall include all articles used for food, drink, confectionery or condiment by man or animals, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

History: En. Sec. 2, Ch. 256, L. 1921; re-en. Sec. 2598, R. C. M. 1921.

2599. Penalty for violation of act—disposal of fines. Any person who violates provisions of this act shall be guilty of a misdemeanor and upon conviction, for the first offense, shall be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars, and for the second offense by a fine of not less than fifty dollars nor more than two hundred dollars, and for the third and subsequent offenses by a fine of not more than one hundred dollars and imprisonment in the county jail for not less than thirty days nor more than ninety days. All fines collected for violations of the provisions of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the general fund as provided by law.

History: En. Sec. 3, Ch. 256, L. 1921; re-en. Sec. 2599, R. C. M. 1921.

CHAPTER 238

REGULATION OF MANUFACTURE AND SALE OF PARIS GREEN, LEAD ARSENATE AND OTHER FUNGICIDES AND INSECTICIDES

- Section 2600. Manufacture of adulterated insecticides, paris green, etc., forbidden.
2601. Same—shipment and delivery forbidden.
2602. Adulterated articles defined.
2603. "Misbranded," use of term.
2604. "Misbranded" defined.
2605. Collection of samples in original packages.
2606. Delivery of original packages to state entomologist.
2607. Director of experiment station to analyze.
2608. Insecticide, paris green, lead arsenate, and fungicides defined.
2609. Dealer's defense.
2610. Proceedings against forbidden articles in transportation.
2611. Certificate of director of experiment station—fees for.
2612. Fines, disposal of.
2613. Penalty for violation of act.
2614. Person to include what.

2600. Manufacture of adulterated insecticides, paris green, etc., forbidden. It shall be unlawful for any person to manufacture within the state of Montana any insecticide, paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act.

History: En. Sec. 1, Ch. 26, L. 1911; re-en. Sec. 2600, R. C. M. 1921.

2601. Same—shipment and delivery forbidden. Any person who shall offer for shipment, or delivery from any point in the state of Montana to any other point in the state of Montana, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; or any person who shall receive, or offer to receive, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act, and having received, shall sell or deliver, or shall offer for sale or delivery, such adulterated or misbranded insecticide, or paris green, or lead arsenate, or fungicide, shall be guilty of a violation of this act.

History: En. Sec. 2, Ch. 26, L. 1911; re-en. Sec. 2601, R. C. M. 1921.

2602. Adulterated articles defined. For the purpose of this act, an article shall be deemed to be “adulterated”—

In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled “lead arsenate and water,” the percentage of water being plainly and correctly stated on the label.

In the case of insecticides or fungicides other than paris green and lead arsenate: First, if its strength or purity fall five per cent. or more below the professed standard of quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended to use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used.

History: En. Sec. 3, Ch. 26, L. 1911; re-en. Sec. 2602, R. C. M. 1921.

2603. “Misbranded,” use of term. The term “misbranded,” as used herein shall apply to insecticides, paris green, lead arsenate, or fungicide, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients of the substances contained therein which shall be false or misleading in any particular.

History: En. Sec. 4, Ch. 26, L. 1911; re-en. Sec. 2603, R. C. M. 1921.

2604. “Misbranded” defined. For the purpose of this act, an article shall be deemed to be “misbranded”—

In the case of insecticides, paris green, lead arsenate and fungicides: First, if it be an imitation or offered for sale under the name of another

article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package.

In the case of insecticides other than paris green and lead arsenates and fungicides: First, if they contain arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient, the producer may at his discretion state plainly upon the label the correct names and percentage amount of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients except in so far as to state the total percentage of inert ingredients present.

History: En. Sec. 5, Ch. 26, L. 1911; re-en. Sec. 2604, R. C. M. 1921.

2605. Collection of samples in original packages. It shall be the duty of the state entomologist, upon the advice and under the direction of the director of the experiment station, to collect from time to time and deliver to the director of the experiment station specimens of insecticides, paris greens, lead arsenates, and fungicides in unbroken original packages, manufactured or offered for sale in the state of Montana, for the purpose of determining whether or not such insecticides, paris greens, lead arsenates, and fungicides are adulterated or misbranded within the meaning of this act.

History: En. Sec. 6, Ch. 26, L. 1911; re-en. Sec. 2605, R. C. M. 1921.

2606. Delivery of original packages to state entomologist. When any citizen of the state has reason to believe that any particular brand or lot of insecticide or paris green, or lead arsenate, or a fungicide, is adulterated or misbranded within the meaning of this act, he may send or deliver to the state entomologist an original and unbroken package of the article in question. Upon receipt of such a questionable article it shall be the duty of the state entomologist to deliver it to the director of the experiment station, who shall examine or cause an investigation to be made and, at his discretion, may cause chemical examinations of such questioned articles as hereinafter provided.

History: En. Sec. 7, Ch. 26, L. 1911; re-en. Sec. 2606, R. C. M. 1921.

2607. Director of experiment station to analyze. Upon the receipt of specimens of insecticides, paris greens, lead arsenates, and fungicides in unbroken original packages, as hereinbefore provided, the director of the

experiment station shall make, or cause to be made, a chemical analysis of such specimens for the purpose of determining whether or not they comply with the requirements of this act; provided, that when the director has information showing that samples delivered to him for examination are out of lots of insecticides, paris greens, lead arsenates, or fungicides that have already been examined a sufficient number of times to indicate whether or not they comply with the requirements of this act then the director may refuse to examine such lots and so notify the state entomologist or citizens of the state.

History: En. Sec. 8, Ch. 26, L. 1911; re-en. Sec. 2607, R. C. M. 1921.

2608. Insecticide, paris green, lead arsenate, and fungicides defined. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects, mites or ticks which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term "paris green," as used in this act, shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

History: En. Sec. 9, Ch. 26, L. 1911; re-en. Sec. 2608, R. C. M. 1921.

2609. Dealer's defense. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the state of Montana from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it; said guaranty, to afford protection shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this act.

History: En. Sec. 10, Ch. 26, L. 1911; re-en. Sec. 2609, R. C. M. 1921.

2610. Proceedings against forbidden articles in transportation. Any insecticide, paris green, lead arsenate, or fungicide that is adulterated or misbranded within the meaning of this act and is being transported from one point within the state of Montana to another point within the state of Montana to be sold, wholly or in part, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the state of Montana, shall be liable to be proceeded against in any district court of the state of Montana. If any such article is condemned as being adulterated or misbranded within the meaning of this act, the same shall be disposed of by destruction or by sale, as the said court may direct; and the proceeds thereof, if sold, less the legal costs and

charges, shall become a part of the expense fund as hereinafter provided; but such goods shall not be sold in any jurisdiction contrary to the provisions of this act or the laws of the jurisdiction; provided, however, that upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this act or the laws of this state, the court may by order direct that such articles be delivered to the owner thereof.

History: En. Sec. 11, Ch. 26, L. 1911; re-en. Sec. 2610, R. C. M. 1921.

2611. Certificate of director of experiment station—fees for. When any particular lot or brand of an insecticide, paris green, lead arsenate, or fungicide, manufactured in the state of Montana, is found to comply with all the requirements of this act, the director of the experiment station shall have authority to issue certificate, and the person to whom such certificate is issued may use the same on packages of the article so certified, or in advertising matter concerning such articles; provided, however, that articles bearing such certificate shall be subject to re-examination, and if found to fail to comply with all of the requirements of this act, shall be proceeded against as in uncertified articles. Said director of the experiment station shall have authority to levy a fee of from five to fifty dollars for each and every certificate issued in compliance with this section, such fees to be placed in an expense fund as hereinafter provided.

History: En. Sec. 12, Ch. 26, L. 1911; re-en. Sec. 2611, R. C. M. 1921.

2612. Fines, disposal of. One-half of all the fines which shall be levied for violations of this act, as hereinafter provided, shall be retained in the treasury of the Montana agricultural experiment station, and these fines, together with the fees as provided for in the preceding section, shall constitute an expense fund from which the director shall pay the necessary and actual expenses incurred by the state entomologist and the experiment station in carrying out the provisions of this act; provided, however, that whenever such fines and fees amount, at any one time, to more than one thousand dollars, the balance above this sum shall be turned into the state treasury.

History: En. Sec. 13, Ch. 26, L. 1911; re-en. Sec. 2612, R. C. M. 1921.

2613. Penalty for violation of act. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than two hundred dollars for the first offense, and upon conviction for each subsequent offense, be fined not less than fifty dollars nor more than three hundred dollars, or sentenced to imprisonment for not more than thirty days, in the discretion of the court.

History: En. Sec. 14, Ch. 26, L. 1911; re-en. Sec. 2613, R. C. M. 1921.

2614. Person to include what. The word "person," as used in this act shall be construed to include both the plural and the singular, as the case may be, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or em-

ployed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society, or association, as well as that of the other person.

History: En. Sec. 15, Ch. 26, L. 1911; re-en. Sec. 2614, R. C. M. 1921.

CHAPTER 239

REGULATION OF MANUFACTURE AND SALE OF SHODDY MATERIAL

Section 2615. Manufacture and sale of shoddy prohibited.

2616. Definition of shoddy.

2617. Health boards to enforce act and make inspections.

2618. Prosecutions.

2619. Penalty for violation of act.

2615. Manufacture and sale of shoddy prohibited. No person, firm, or corporation, shall, within this state, sell, offer for sale, or manufacture, what is commonly known as shoddy, or sell, offer for sale or manufacture mattresses, pillows, couches, couch pads, or lounges, containing shoddy in whole or in part.

History: En. Sec. 1, Ch. 146, L. 1915; re-en. Sec. 2615, R. C. M. 1921.

2616. Definition of shoddy. The term "shoddy," as used in this act, shall include all material made or manufactured of rags, wearing apparel, clothing, rugs, carpets or blankets.

History: En. Sec. 2, Ch. 146, L. 1915; re-en. Sec. 2616, R. C. M. 1921.

2617. Health boards to enforce act and make inspections. It shall be the duty of all boards and departments of health, health officers, or officials discharging similar duties in the state of Montana, to enforce the provisions of this chapter, and they shall have power in the performance of their official duties to enter any store or manufacturing establishment where the articles mentioned in section 2615 are manufactured or are for sale, and make such examination as they deem necessary in order to ascertain whether or not the provisions of this chapter are being violated.

History: En. Sec. 3, Ch. 146, L. 1915; re-en. Sec. 2617, R. C. M. 1921.

2618. Prosecutions. It shall be the duty of the attorney general and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter.

History: En. Sec. 4, Ch. 146, L. 1915; re-en. Sec. 2618, R. C. M. 1921.

2619. Penalty for violation of act. Every person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months, or both such fine and imprisonment.

History: En. Sec. 5, Ch. 146, L. 1915; re-en. Sec. 2619, R. C. M. 1921.

2620. Repealed—Chapter 93, laws of 1929.

CHAPTER 240

REGULATION OF PRODUCTION AND SALE OF DAIRY PRODUCTS

Section 2620.1. Regulation of dairy industry.

2620.2. Enforcement of standards.

2620.3. Statistics and extension work.

- 2620.4. Definition of terms.
- 2620.5. Sampling and test of dairy products.
- 2620.6. Test of samples—rules of evidence.
- 2620.7. Keeping of samples.
- 2620.8. Licensing all persons collecting on milk or cream routes.
- 2620.9. Regulation of persons collecting milk and cream.
- 2620.10. Babcock test—license and operation.
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- 2620.12. Existing licenses continued.
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- 2620.15. Registry of location of dairy product factories.
- 2620.16. Licensing of dairy product plants.
- 2620.17. Licensing of milk and cream buying stations.
- 2620.18. Licenses—revocation.
- 2620.19. Reports of factories.
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- 2620.23. Regulation of cheese factories.
- 2620.24. Location of milk and cream buying and receiving stations.
- 2620.25. Sanitary control of dairy products.
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- 2620.27. Books of certain factories to be kept open.
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- 2620.66. Cream grader, weigher and sampler license and examination.
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2620.1. Regulation of dairy industry. The department of agriculture, labor and industry of the state of Montana, through its division of farming and dairying, shall have the general regulation of the industry of dairying in this state, including the regulation and sanitary inspection of all creameries, butter and cheese factories, milk or cream receiving stations, and ice cream factories. The sanitary inspection of dairies, milk plants, condensed milk factories and powdered milk factories shall be administered by the state livestock sanitary board.

History: En. Sec. 1, Ch. 93, L. 1929.

2620.2. Enforcement of standards. The department of agriculture, labor and industry, shall enforce the laws of the state regulating the standards of all dairy products, except whole milk, skimmed milk, condensed or evaporated milk, whether made from whole milk or skimmed milk. The regulation of said standards above excepted shall be the duty of the livestock sanitary board.

History: En. Sec. 2, Ch. 93, L. 1929.

2620.3. Statistics and extension work. It shall be the duty of the department of agriculture, labor and industry to compile and publish statistics concerning all phases of the dairy industry in the state and to encourage and advertise said industry in every possible manner. Said department shall carry on a campaign of education in conjunction with the extension work of the college of agriculture and mechanic arts for the purpose of encouraging interest in the dairy industry and of furnishing scientific and practical information concerning the same.

History: En. Sec. 3, Ch. 93, L. 1929.

2620.4. Definition of terms. For the purpose of this act, the following definitions are hereby adopted:

Butter is the clean, non-rancid product made by gathering in any manner, the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty per centum (80%) of milk fat. No tolerance for any deficiency in milk fat shall be permitted. Butter may also contain added coloring matter.

Renovated butter or process butter is the product made by melting and re-working, without the addition or use of chemicals or any substances except whole milk, cream or salt, and contains not less than eighty per centum (80%) of milk fat.

Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning, and contains, in the water-free substance, not less than fifty per centum (50%) of milk fat, and not more than thirty-nine per centum (39%) of moisture. Cheese may also contain added coloring matter.

Skimmed milk cheese is the sound, solid and ripened product made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter, or any combination of any such products, with or without sweetening, clean wholesome eggs or egg products, and with or without the use of harmless flavoring and coloring. Ice cream shall contain not less than ten per centum (10%) of milk fat, and not less than thirty-three per centum (33%) total solids, and may or may not, contain pure and harmless edible stabilizer. Ice cream may contain not to exceed one per centum (1%) gelatine.

Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients shall be from sound, clean and mature fruit, and it may contain not less than nine per centum (9%) of milk fat.

Nut ice cream shall conform to the requirements of ice cream, except that the nut ingredients shall be sound and non-rancid and it may contain not less than nine per centum (9%) of milk fat.

French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits and all similar frozen products, excepting sherbets and water ices, are varieties of ice cream.

Creamery. A creamery is a place where the milk or cream furnished by three (3) or more persons, is used for manufacture into butter for commercial purposes.

Cheese factory. A cheese factory is a place where milk furnished by three (3) or more persons, is made into cheese for commercial purposes.

Ice cream factory. An ice cream factory is any place where ice cream is made for sale.

Milk or cream buying or collecting station. A milk or cream buying, or collecting station is any place where milk or cream is bought or collected for shipment or delivery to a creamery or to any person intending to make use of the same for commercial purposes.

Person. The term "person" as used herein shall include all persons, whether natural or artificial, including firms, co-partnerships, corporations and marketing associations of every description.

Department. The term "department" as hereinafter used shall, unless otherwise indicated, refer to the department of agriculture, labor and industry of the state of Montana.

History: En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931.

2620.5. Sampling and test of dairy products. It shall be the duty of the department to provide suitable means for the taking of samples of all dairy products and of all imitations thereof.

Said department shall have the authority and it shall be its duty to take such samples from any person engaged in the handling, manufacture or sale of dairy products or imitations thereof, but the agent of the department taking the same must at the time of such taking, pay or offer to pay for them at their full value, and if payment is accepted, such agent must take a receipt for the same from the person from whom the samples are obtained.

History: En. Sec. 5, Ch. 93, L. 1929.

2620.6. Test of samples—rules of evidence. The department may require a chemist from the state board of health to test and analyze samples of dairy products taken by it. All such samples and the record of their analysis or test, when identified as to the sample of the record thereof by the oath of the officer taking the same, or when verified as to the analysis or test by the oath of the chemist making the same, shall be admissible in evidence in any court of this state or in any prosecution for the violation of this act or for the violation of any rule or regulation of the department as prima facie evidence of the facts disclosed thereby.

History: En. Sec. 6, Ch. 93, L. 1929.

2620.7. Keeping of samples. All persons purchasing milk or cream, for manufacture, sale or shipment, and paying for the same on the basis of the butter fat contained therein as determined by the Babcock Test, shall immediately upon receiving such milk or cream, take a representative sample thereof. If any of said milk or cream shall be left on hand at any milk or cream buying or collecting stations, the operator of such stations shall likewise take a representative sample of the same. Such samples shall not be less than two (2) ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation or the escape of any of the contents thereof. All samples taken shall be plainly marked or labeled and such mark or label shall be entered on the records of the purchaser to correspond with the name of the person from whom the purchase was made and such record shall also show the weight of the milk or cream, if any, left on hand after shipment is made. Such samples shall then be protected from extremes of heat and cold until five (5) o'clock P. M. of the following day, unless the next day be Sunday or any other holiday in which event the samples shall be held until five (5) o'clock P. M. of the next day following such holiday. During the period that samples are so held, after the making of the test by the person taking same, they shall be opened only in the presence of the commissioner of agriculture, labor and industry or his authorized agent.

History: En. Sec. 7, Ch. 93, L. 1929.

2620.8. Licensing all persons collecting on milk or cream routes. No person shall hereafter engage in collecting milk or cream upon any established milk or cream route, for any creamery, cheese factory or milk or cream buying or receiving station, without first procuring a license from the department of agriculture, labor and industry.

A fee of five dollars (\$5.00) shall be charged for each such license and for each annual renewal thereof. All such licenses shall expire on the 31st day of December of each year.

History: En. Sec. 8, Ch. 93, L. 1929.

2620.9. Regulation of persons collecting milk and cream. It shall hereafter be unlawful for any person regularly engaged in collecting milk or cream upon any established milk or cream route for any creamery, ice cream factory, cheese factory or milk or cream buying or receiving station, to sample such milk or cream for the purpose of testing for butterfat, or to transfer such milk or cream from one (1) can or container to another while in transit, except in a creamery or in a room equipped in conformity with the requirements of this act governing creameries or cream buying or receiving stations. Collection of cream on all cream routes shall be made at least every four (4) days.

History: En. Sec. 9, Ch. 93, L. 1929; amd. Sec. 2, Ch. 39, L. 1931.

2620.10. Babcock Test—license and operation. The Babcock Test is hereby adopted as the official dairy test for use in the state of Montana. No person shall operate the Babcock Test in any creamery, cheese factory, or other place where milk or cream is bought and paid for on the basis of its fat content without first passing the examination and securing the license hereinafter provided for. Any person desiring to operate the Babcock Test at any of the places enumerated in this section, shall apply to the department of agriculture, labor and industry for permission to take the Babcock Test operator's examination. Such examination shall be given to the applicant by the chief of the dairy division of the department, or his representative. Upon passing said examination to the satisfaction of the examining official, the applicant shall be issued a license authorizing him to operate the Babcock Test in the state of Montana for a period of one year. A fee of two dollars (\$2.00) shall be paid for each such original license and a fee of one dollar (\$1.00) for each renewal thereof. All such licenses shall expire on December 31st of each year.

History: En. Sec. 10, Ch. 93, L. 1927.

2620.11. Temporary permit to operate Babcock Test. Any person who shall desire an immediate license to operate the Babcock Test before it is reasonably convenient for the department to give the examination provided for in the preceding section, may apply to the department for a temporary permit to operate the Babcock Test, stating in his application what training or experience he has had in the use or operation of the same. The department may thereupon in its discretion issue to the applicant a temporary permit to operate the Babcock Test, which shall entitle the holder to operate said test pending the giving of the examination prescribed in the preceding section. Application for such temporary permit shall be accompanied with a fee of two dollars (\$2.00) which shall pay for the first regular Babcock Test operator's license thereafter issued to such applicant. If applicant fails in his examination, or discontinues operation of Babcock Test before examination can be given, he forfeits fee of two dollars (\$2.00) paid for such license.

History: En. Sec. 11, Ch. 93, L. 1929.

2620.12. Existing licenses continued. All Babcock Test operator's licenses issued by the department before the effective date of this act shall

remain in force and effect until December 31st, 1929, after which the holders thereof shall be required to procure licenses under the terms of this act.

History: En. Sec. 12, Ch. 93, L. 1929.

2620.13. Babcock Test—revocation of license. The commissioner of agriculture, labor and industry is hereby authorized and empowered to revoke the license of any Babcock Test operator for failure to comply with the provisions of this act or with any of the rules, or regulations of the department relating to said test. Any person who shall operate the Babcock Test in any of the places specified in this act without first having the license required by this act, or who shall operate said test after the revocation of said license, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than thirty days (30) or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 93, L. 1929.

2620.14. Babcock Test—method of operation. The following is the method which shall be adopted as the standard for the operation of the Babcock Test for the state of Montana and shall be used by persons, firms, or corporations paying for milk or cream on the basis of the butterfat content of such commodity or commodities.

TESTING MILK. The milk from which the sample to be tested is taken shall be thoroughly mixed by pouring from one vessel to another three (3) times. The sample to be tested shall consist of eighteen (18) grams by weight or seventeen and six-tenths ($17\frac{6}{10}$) cubic centimeters, as measured in a standard pipette. The standard strength of the acid used for all testing of milk or cream shall be indicated by the specific gravity, which shall not be less than one and eighty-two hundredths, ($1\frac{82}{100}$) nor more than one and eighty-three hundredths, ($1\frac{83}{100}$) as determined by a standard hydrometer. After properly mixing the sample of milk and acid in the test bottle, centrifuging shall be for periods of five (5) minutes, two (2) minutes, and one (1) minute. After the first period of centrifuging, water shall be added, sufficient to fill the test bottle up to the base of the neck and after the second centrifuging, water shall be added sufficient to raise the fat in the neck of the test bottle to near the top of the graduation. The water used to fill the test bottles shall be at a temperature of one hundred and forty degrees (140°) Fahrenheit or more. After the last period of centrifuging, the test bottles shall be immersed in a bath prepared for the purpose, which shall consist of water at not less than one hundred and thirty degrees (130°) nor more than one hundred and forty degrees (140°) Fahrenheit, and they shall remain immersed for at least ten (10) minutes, and the temperature of the bath shall be kept between the temperature before named for the full period of immersion. The test shall be read immediately after the test bottles are taken from the bath. Dividers shall be used to determine the length of the fat column in the neck of the test bottles. The reading shall be from the bottom of the lower meniscus to the top of the upper meniscus of the fat column.

TESTING CREAM. The method of testing cream shall be the same as for milk, except that all samples of cream tested shall be weighed by either the nine (9) or eighteen (18) gram method, and the reading of the fat column in the neck of the test bottle shall be from the bottom of the lower meniscus to the bottom of the upper meniscus. Glymol must be used to destroy the upper meniscus, and must be added just before reading, and the reading shall be from the bottom of the lower meniscus to the bottom of the glymol on the top of the fat column.

History: En. Sec. 14, Ch. 93, L. 1929.

2620.15. Registry of location of dairy product factories. No persons shall operate any creamery, cheese factory, ice cream factory or milk or cream buying or collecting station or any other manufactory or establishment for the making or shipment of dairy products, without first registering the location of his place of business, and the name of the owner or manager, with the commissioner of agriculture, on or before the first (1st) day of April each year. Failure to comply with the requirements of this section shall constitute a misdemeanor and shall subject the offender to the penalties provided by the general law of the state for the punishment of misdemeanor.

History: En. Sec. 15, Ch. 93, L. 1929.

2620.16. Licensing of dairy product plants. It shall be unlawful for any person to operate or carry on any creamery, butter factory, cheese factory or ice cream factory without first securing a license from the department, which license shall expire on the 31st day of December of the year in which it is issued. All licenses which heretofore have been issued by the department to any of the establishments named in this and the following section, shall remain in force until their expiration, and the holder thereof shall not be required to procure a new license under the terms of this act until the expiration or revocation of such former license. The following schedule of license fees shall be charged by the department for all licenses issued under this section:

Creameries and cheese factories manufacturing one hundred thousand pounds (100,000 lbs.) or less of product a year, twenty dollars (\$20.00). An addition of five dollars (\$5.00) shall be made to the fee for any such license for each one hundred thousand pounds (100,000 lbs.) or any fraction thereof annually produced in excess of the first one hundred thousand pounds (100,000 lbs.)

One thousand (1,000) gallons or less of product a year, five dollars (\$5.00). Those producing more than one thousand (1,000) gallons and less than ten thousand (10,000) gallons of product a year, twenty dollars (\$20.00). An addition of five dollars (\$5.00) shall be made to the fee for any such license for each ten thousand (10,000) gallons or fraction thereof annually produced in excess of the first ten thousand (10,000) gallons.

The total year's production of the applicant for a year immediately preceding the application for a license shall determine the amount of any license required by this section.

History: En. Sec. 16, Ch. 93, L. 1929.

2620.17. Licensing of milk and cream buying stations. It shall be unlawful for any person to operate or carry on any milk or cream buying or collection station without first securing from the department an annual license to do so, which said license shall expire on the 31st day of December of each year.

The following schedule of fees shall be charged by the department for all such licenses:

All stations handling less than one thousand five hundred pounds (1,500 lbs.) of butterfat per month, five dollars (\$5.00); all stations handling one thousand five hundred pounds (1,500 lbs.) or over per month and less than three thousand pounds (3,000 lbs.) ten dollars (\$10.00); all stations handling three thousand pounds (3,000 lbs.) or over per month and less than six thousand pounds (6,000 lbs.) fifteen dollars (\$15.00); all stations handling six thousand pounds (6,000 lbs.) or more per month, twenty dollars (\$20.00). In computing the annual license to be paid under this section, the highest month's business of such station during the year immediately preceding the application for such license shall determine the amount of the fee.

History: En. Sec. 17, Ch. 93, L. 1929.

2620.18. Licenses—revocation. All licenses issued by the department under this act may be revoked by the commissioner of agriculture, labor and industry of the state whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license or whenever he shall fail to conduct said establishment in an orderly or sanitary manner. If any person whose license has been so revoked by the commissioner shall thereafter continue to conduct or carry on said place of business without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties in this act hereinafter provided.

History: En. Sec. 18, Ch. 93, L. 1929.

2620.19. Reports of factories. It shall be the duty of every person operating a creamery, cheese factory, ice cream factory, or milk or cream buying or receiving station in this state, to render to the department once a month and not later than the tenth day of each month, a full report of the amount of butter, cheese, ice cream or other dairy products handled or manufactured during the preceding month. Any person failing to render the report required by this section or failing to make said report when the same is due, shall be guilty of a misdemeanor and subject to the penalties hereinafter provided for the violation of the provisions of this act.

History: En. Sec. 19, Ch. 93, L. 1929.

2620.20. Location and construction of creameries and cheese factories and ice cream factories. The location of creameries, cheese factories, and ice cream factories, shall be subject to the following regulations:

(a) They must be located at least fifty (50) feet from any building or establishment which would constitute an outside, contaminating influence.

(b) They shall not be located within two hundred (200) feet of any hog pen or corral.

(c) They shall be equipped with a steam boiler large enough to furnish sufficient steam and hot water to thoroughly wash and sterilize all equipment and utensils. The boiler must be kept in a room separate from the rest of the plant, provided, however, that this clause does not apply to ice cream factories producing one thousand (1,000) gallons or less per annum.

(d) The floors of the part of the establishment where butter, cheese, or ice cream are manufactured or stored, must be of concrete, and so constructed that they can be thoroughly washed and drained.

(e) The plant must be connected with a sewer or with a pipe which shall convey the waste water under-ground to a point not less than fifty (50) feet from the building.

(f) The plant must be well ventilated and must be provided with windows, containing at least ten (10) square feet of glass for each one hundred (100) square feet of floor space. Between May 1st and November 1st of each year, screen doors shall be provided and used on all outside doorways. During said time screens shall be provided and used on all open windows.

(g) The buildings and equipment must be of such a character that the dairy products manufactured or kept therein shall be preserved in first class, sanitary condition.

(h) Meat or other products must not be stored in the same room with dairy products, if it can be shown unsanitary.

A violation of any provisions of this section shall constitute a misdemeanor and shall be punishable as hereinafter provided.

History: En. Sec. 20, Ch. 93, L. 1929.

2620.21. Preliminary permit to operate new enterprise. Whenever any person shall desire to commence the operation of a creamery, cheese factory, ice cream factory or milk or cream buying or receiving station, he shall give notice of such intention to the department before starting such enterprise, accompanied by a general statement as to the nature and equipment of the proposed plant. The department shall investigate such proposed enterprise and if satisfied that the same is or will be operated in compliance with the requirements of law and the rules of the department relative to the same, shall grant the applicant a permit to carry on the same. No person shall commence any such operations without such permit. A violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

History: En. Sec. 21, Ch. 93, L. 1929.

2620.22. Regulation of milk and cream stations. On and after the effective date of this act the following regulations shall apply to all stations within the state of Montana where milk or cream is bought or collected for shipment or sale:

The room in which any such station is operated shall contain floor space enough for all necessary equipment in said station, including a cooling tank of sufficient size to hold all cream bought or collected at such station

on each day, or other adequate cooling system approved by the department of agriculture.

All such stations shall be equipped with a steam boiler of sufficient capacity to furnish enough steam to thoroughly sterilize all milk and cream cans received at such station. No stove or heating apparatus other than a steam boiler shall be used to heat water with which to cleanse utensils used in any cream station. The provisions of this section, however, shall not apply to forwarding stations in which no testing for butterfat is made.

History: En. Sec. 22, Ch. 93, L. 1929; amd. Sec. 3, Ch. 39, L. 1931.

2620.23. Regulation of cheese factories. All cheese factories must be equipped with sanitary whey tanks which shall be built upon a cement base or floor and shall be elevated a sufficient distance above the floor to permit a wagon or truck driving alongside or underneath the same for the purpose of filling by gravity. Whey tanks must be located not less than fifty (50) feet from the factory and must be equipped with a steam or hot water pipe for use in pasteurization. All whey shall be pasteurized and the tank shall be properly cleaned after use. All whey delivered to any person must be pasteurized at a temperature of not less than one hundred and forty-five degrees (145°) Fahrenheit and held for thirty (30) minutes.

History: En. Sec. 23, Ch. 93, L. 1929.

2620.24. Location of milk and cream buying and receiving stations. All milk and cream buying and receiving stations shall be located on well drained ground at least fifty (50) feet from any outside contaminating influence. If within a building where any other business is conducted it shall be separated from the other rooms of the building by a tight wall or walls and if there is an opening for passage between the room used as the station and the rest of the building, there shall be two doors, one at each end of a vestibule or entry which shall be at least six feet in length. The doors shall be of wood, or wood and glass, and sufficient to keep all odors or dust from entering the station from any other part of the building. No station for the purpose of purchasing, storing, or handling milk or cream shall be situated inside of, nor within fifty feet of any blacksmith shop, garage, grain elevator, livery stable, or any other building, corral, hog pen, or other place which can be denominated a contaminating influence; nor shall any oil, gasoline, or any other liquid or substance of a contaminating nature be kept within fifty feet of such station. The room used, shall not be used for any purpose other than a milk or cream receiving station and shall at no time contain anything except milk or cream received there, the cans or other receptacles in which it is shipped, and such furniture and equipment as may be necessary to efficiently conduct the business of such station. No gasoline engine shall be used or kept inside the room where the milk or cream is stored or kept. The engine or boiler shall be kept in a room partitioned off from the room where the milk or cream is stored or kept. A sanitary sink or tank with suitable drain shall be provided, in which to wash cans and other utensils used in conducting the business of the station, and a waste jar in which to empty the contents of the test bottles after the testing has been completed shall also be used. Dogs, cats, or other animals shall not be permitted to enter the room where the milk or cream

is stored, and pieces of screen secured by hoops or other devices, shall be used on the tops of the cans containing milk or cream while in storage, to prevent mice, insects or dirt from falling in. The floor of the room where the milk or cream is kept or stored, shall be of cement or concrete, with a drain which shall be connected with a sewer, or with a pipe which shall convey the waste water underground to a point not less than fifty feet from the station. It shall be provided with windows containing at least ten square feet of glass for each one hundred square feet of floor space. Between May 1st and November 1st of each year, screen doors shall be provided and in use on all outside doorways, and during that time screens shall be on all windows in the room. There shall be provided a cooling tank, large enough to hold all of the cream or milk received or stored, and in which there shall be at all times an amount of cold running water, or ice water, sufficient to thoroughly cool all milk or cream stored there. There shall be provided a steam boiler large enough to furnish sufficient steam to thoroughly sterilize cans; and all cans in which milk or cream is received shall be thoroughly washed in clean water with a sterilizing or cleansing powder added, and either sterilized with live steam or scalded with boiling water before being returned to the patron. A rack shall be provided on which cans not immediately returned to the patron shall be inverted for the purposes of drying and airing, after being sterilized by steaming and scalding.

History: En. Sec. 24, Ch. 93, L. 1929.

2620.25. Sanitary control of dairy products. Acting upon the report of an inspector, the commissioner of agriculture or his authorized agent, may order any creamery, ice cream factory, cheese factory, or cream station found to be not kept in a sanitary condition, to be closed; and it shall be closed forthwith and kept closed until such time as the department shall find that the sanitary conditions of such creamery, ice cream factory, cheese factory or cream station, are satisfactory. Any person or persons operating any creamery, ice cream factory, cheese factory, or cream station, before receiving notice from the commissioner of agriculture, or his authorized agent to open the same, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or by both such fine and imprisonment. In addition to such fine or imprisonment, any person or persons operating any creamery, ice cream factory, cheese factory, or cream station after receiving notice from the commissioner of agriculture, or his authorized agent, to close the same, and before receiving notice from the commissioner of agriculture, or his authorized agent, permitting opening of the same, shall pay an additional fine of twenty-five dollars for each day such creamery, ice cream factory, cheese factory or cream station is illegally operated. The commissioner of agriculture or any of his authorized agents shall have the right to enter any creamery, dairy, barn or farm building, factory, building, store, receiving station, railroad depot, express office or other place where dairy products, or substitutes therefor, are produced, manufactured, sold or kept in storage or while in transit from one place to

another, for the purpose of inspection of such dairy products or substitutes for the same, or to obtain samples of the same for testing or analysis. It is expressly provided that such products shall include all butter, cheese, ice cream, and other dairy products, all substitutes for dairy products and all substances made in imitation of the same, except whole milk, skimmed milk, evaporated or condensed milk or powdered milk or any product of which the word "milk" either alone or in connection with any other word or words is used to designate the same, or any liquid or substances made or sold or offered for sale as a substitute for, or made in imitation of the same.

History: En. Sec. 25, Ch. 93, L. 1929.

2620.26. Certain persons must assist commissioner. All clerks, book-keepers, express agents, railroad officials, employees or employees of common carriers, shall render to the dairy department and his deputies all the assistance in their power in tracing, finding or discovering the presence in any depot, baggage or express car, warehouse or elsewhere, in the custody of such carrier, of any article or commodity mentioned in this law. Refusal or wilful neglect on the part of any of the persons hereinabove named to render such assistance, shall be a misdemeanor and shall be punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 25a, by Sec. 4, Ch. 39, L. 1931.

2620.27. Books of certain factories to be kept open. Operators of all co-operative butter, cheese, and condensed milk factories shall keep their books open for inspection of any patron at all times, showing the daily amounts of milk and cream received, and the per cent and amount of fat in the milk and cream received from each patron, and the amounts of cream sold, and butter, cheese, or condensed milk manufactured daily. Every facility shall be offered to the patron for keeping himself informed in regard to the business of the butter, cheese and condensed milk factory, and checking up his daily product with his return.

History: En. Sec. 26, Ch. 93, L. 1929.

2620.28. Checks issued for milk or cream—contents of stub—copy. All checks issued by any person, (as the word "person" is defined in this act), for milk or cream, shall carry a stub, containing the name of the purchaser, the date of receipt, the weight and test of milk or cream, the number of pounds of milk fat, the price per pound, and the grade of cream or milk. The same number on the stub shall appear on the corresponding check and a carbon copy of both check and stub or ledger reference must be kept at the point of purchase in the state of Montana.

History: En. Sec. 26a, by Sec. 5, Ch. 39, L. 1931.

2620.29. Marking weight on cheese containers required. All cheese offered or exposed for sale, when placed in packages, jars or other containers, in the state of Montana, shall be full marked weight and each package, jar or other container shall have the net weight marked thereon by the

manufacturer, which weight shall be exclusive of the package, jar or other container.

History: En. Sec. 26B, by Sec. 6, Ch. 39, L. 1931.

2620.30. Sanitary regulation of foreign dairy products. All milk, butter, cheese, condensed milk, ice cream or other dairy products shipped into Montana for sale or use must be produced under the same sanitary regulations and requirements as those governing the production of the same in this state. The commissioner of agriculture shall have the authority to require a sworn statement from any persons shipping dairy products into the state of Montana as to the sanitary conditions under which the same were produced and unless such products are shown to have been produced under similar or equivalent sanitary conditions to those required by the laws of this state, they shall not be sold, given away, transported or used in the state of Montana.

History: En. Sec. 27, Ch. 93, L. 1929.

2620.31. Regulation of use and loaning of containers. Every person, delivering milk, cream or ice cream to any other person in cans or other containers shall keep such cans or other containers at all times free from filth, rust or other deleterious substance and in a clean and wholesome condition for holding such content.

Every person receiving milk, cream, or ice cream at the place of destination in cans or other containers which are to be returned to the shipper or seller, shall cause such cans or other containers to be thoroughly cleansed and immediately returned after being emptied. The term "place of destination" as used in this section shall include both the final consignee of any milk, cream or ice cream, and also any receiving station or other agent or handler by whom such commodity is transferred from the original containers thereof.

No creamery, cheese factory, ice cream factory or other dairy enterprise shall furnish their patrons with cans for the use of such patrons in bringing milk or cream to such creamery, factory, or plant. A violation of the provisions of this section shall be a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 28, Ch. 93, L. 1929.

2620.32. Standard measures for dairy products. The standard measure, or capacity for milk shall be the gallon containing two hundred thirty-one cubic inches, the half gallon shall contain one hundred fifty and five-tenths cubic inches, and the quart one fourth as much as the gallon, and the pint one-half as much as the quart.

History: En. Sec. 29, Ch. 93, L. 1929.

2620.33. Standard butter measure. The standard measure for the sale of butter, in the state of Montana, shall be sixteen (16) ounces, (avoirdupois weight) to the pound, exclusive of the wrapper or container, no tolerance in deficiency being allowed. All butter sold, offered or exposed for sale in paper containers or wrappers, shall be in packages of one (1) or two (2) pounds, net standard avoirdupois weight, no tolerance for deficiency being allowed; provided, however, that packages of the weight herein

specified may be made up of smaller component packages of wrapped butter in multiples of four (4) or eight (8) ounces each. Any violation of the provisions of this section shall constitute a misdemeanor and be punishable as provided in section 2620.54.

History: En. Sec. 30, Ch. 93, L. 1929; amd. Sec. 7, Ch. 39, L. 1931; amd. Sec. 1, Ch. 168, L. 1933.

2620.34. Maker's name to appear on package. All butter sold in the state of Montana, whether manufactured on a farm or in a creamery, must have the maker's name clearly written or printed in a conspicuous place on the outside of the package in which it is sold, and upon each pound package of butter so sold or offered for sale, the words "net weight," "sixteen ounces" or "net weight one pound," shall appear.

History: En. Sec. 31, Ch. 93, L. 1929.

2620.35. Imitation butter—regulation of. Hereafter the word "butter" shall not be printed or used, either alone or in conjunction with any other word or words upon any carton, package, or other receptacle containing any substitute for butter, such as margarine or any other substance not made entirely from milk fat. No person shall manufacture or sell or expose for sale any substance made of vegetable or animal fats or oils (not from milk or cream) colored in imitation of butter or in any shade of yellow.

All products made and sold or exposed for sale as butter substitutes, and made either wholly or partly from any fat or oil other than from pure unadulterated milk or cream shall have plainly marked, stamped or labeled on every package, so made, sold, or exposed for sale, in plain, black, bold-faced letters, one half ($\frac{1}{2}$) inch high, the word "Oleomargarine." Hotels or restaurants using imitation butter or renovated butter, shall place placards, plainly legible from all parts of the dining room marked "Oleomargarine" or "Renovated Butter" (as the case may be) "used here."

All oleomargarine or other substitutes for butter, and all renovated or process butter or patent butter, made or sold or offered for sale, shall have the name of the manufacturer plainly stamped or printed in a conspicuous place on the outside of the carton or package in which it is contained.

History: En. Sec. 32, Ch. 93, L. 1929.

2620.36. Use of extraneous fats forbidden. No person shall manufacture, mix or compound with or add to natural milk, cream, or butter any animal fats or animal or vegetable oils, nor make nor manufacture, any oleaginous substance not produced from milk or cream, with the intent to sell the same as butter or cheese made from unadulterated milk or cream, or have the same in his possession with such intent; nor shall any person solicit orders for same or offer for sale, nor shall any such article or substance or compound so made or produced be sold as or for butter or cheese, the product of the dairy.

History: En. Sec. 33, Ch. 93, L. 1929.

2620.37. Prohibiting use of certain products in state institutions. No oleomargarines, substitute butter, renovated butter, or any other substance designed as an imitation of or substitute for butter, or any condensed milk from which the butterfat has been removed, and a vegetable or other oil

has been substituted therefor, shall be used in any of the educational, charitable, hospital, medical, reformatory or penal institutions maintained by the state of Montana, or which receives from the state of Montana, any money, appropriation or financial assistance, whatsoever.

History: En. Sec. 33A by Sec. 8, Ch. 39, L. 1931.

2620.38. Condemnation of unfit products. The commissioner of agriculture, through his agents, or employees, is authorized to condemn any milk, cream, butter, cheese, ice cream or other product of milk, which is found to be impure, unclean, unwholesome or stale, or that is produced, manufactured, handled or kept in an unsanitary place, or that is adulterated; and, he shall have power to mark for identification with a non-toxic substance, any condemned milk or product of milk.

History: En. Sec. 33B by Sec. 9, Ch. 39, L. 1931.

2620.39. Same—regulation of sale of dairy products containing extraneous fats. It shall be unlawful for any person, firm, or corporation, by himself, his servant or agent, or as the servant or agent of another to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, skim milk, butter milk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever. Nothing in this section shall be construed to prohibit the shipment into this state from a foreign state and the first sale thereof in this state in the original package intact and unbroken, of any of the products or articles, the manufacture, sale or exchange of which or possession of which, with intent to sell or exchange is prohibited hereby.

History: En. Sec. 34, Ch. 93, L. 1929.

2620.40. Renovated butter. No person shall sell any butter made by taking original packing stock or other butter, or both, and melting the same and drawing off or extracting the butter fat and mixing such fat with skimmed milk or cream, or other milk products, and rechurning or reworking such mixture; or any butter product by any process commonly known as boiled process, or renovated butter, unless the words "Renovated Butter" shall be plainly branded with bold-faced letters, at least one-half ($\frac{1}{2}$) inch in length, on top and sides of such receptacle, package, or wrapper in which it is kept or sold. And if such butter is exposed for sale uncovered, and not in a receptacle, package or wrapper, then a placard containing the words "Renovated Butter" shall be attached, printed in style and manner as aforesaid, to the mass of butter in such a manner as to be easily seen and read by purchasers; and in addition to such markings, the seller shall, at the time of sale, stamp the package with the words "Renovated Butter" in letters at least one-half inch ($\frac{1}{2}$) in height.

History: En. Sec. 35, Ch. 93, L. 1929.

2620.41. Patent butter. No person shall sell as pure butter any substance in which an abnormal quantity of casein or other ingredients has been incorporated.

History: En. Sec. 36, Ch. 93, L. 1929.

2620.42. Imitation or filled cheese. No person shall manufacture, deal in, sell, offer, or expose for sale, or exchange as cheese, any article or substance in the semblance of or imitation of cheese, made exclusively of unadulterated milk or cream, or both, into which any animal, intestinal, or offal fats or oils, or melted butter in any condition or state of modification of the same, or oleaginous substance of any kind not produced from unadulterated milk or cream, shall have been introduced.

History: En. Sec. 37, Ch. 93, L. 1929.

2620.43. Prohibiting use of coloring matter in oleomargarine. No person shall coat, powder, or color with annato or any coloring whatsoever, butterine, or oleomargarine, or any compound of the same, or any product or manufacture made in whole or in part from animal fats or animal and vegetable oils not produced from unadulterated milk or cream by which means such product, manufacture or compound shall resemble butter or cheese, the product of the dairy; nor shall he have the same in his possession with the intent to sell, nor shall he sell or offer the same for sale.

No person or persons shall manufacture, sell, or expose for sale any poisonous coloring matter for coloring of dairy food products of any kind, nor shall any person or persons use in dairy products any poisonous coloring matter manufactured, sold, offered, or exposed for sale, within the state, nor shall any person or persons sell, offer or expose for sale any dairy food product containing such poisonous coloring matter.

History: En. Sec. 38, Ch. 93, L. 1929.

2620.44. Regulating oleomargarine advertising. It shall be unlawful for any person in connection with the sale, advertisement, or offering for sale of oleomargarine or any other substance intended to be used as a substitute for butter, and which substance is made wholly or in part from animal or vegetable fats other than the fat of pure milk or cream, to use the words "dairy," "creamery," "butter," "cream," or any picture of a cow or cows or the name of any breeds of cattle. A violation of the provisions of this section shall constitute a misdemeanor and shall subject the offender on conviction to a fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00) or to imprisonment for not less than thirty days (30) nor more than six months (6), or to both such fine and imprisonment.

History: En. Sec. 39, Ch. 93, L. 1929.

2620.45. Imitation dairy product dealers' licenses. It shall hereafter be unlawful for any person, firm, or corporation, by himself, his or its servant or agent, to sell, exchange, offer for sale, or have in possession with intent to sell or offer for sale or exchange, any oleomargarine, imitation or filled cheese or any substitute for any dairy product made from milk or cream, without first securing a license from the department of agriculture, labor and industry of the state of Montana to conduct such sale or exchange. The fee for such license shall be two hundred fifty dollars (\$250.00) per quarter for a license to sell at wholesale, and one hundred dollars (\$100.00) per quarter to sell at retail. Said license shall be payable at the beginning of each quarter of the calendar year, or whenever appli-

cation for license is made, and the license shall be issued to cover the following quarterly period, or such part of it as is unexpired at the time the license is applied for. All persons selling, handling or dealing in oleomargarine, imitation or filled cheese, or any substitute for any dairy product, shall make a quarterly report to the department showing the number of pounds of such product sold or disposed of by such person during the preceding three months. The license required by this section shall not be renewed until said statement has been filed by the applicant for such license. Said license shall be posted in a conspicuous place in each store or place of business of the licensee for the inspection of the public and may be revoked by the commissioner of agriculture for failure of the holder thereof to comply with the laws of the state of Montana. Whenever any person, firm or corporation, by himself, his or its servant or agent, or as the agent or servant of another, conducts such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business and a separate fee shall be paid for each such license.

History: En. Sec. 40, Ch. 93, L. 1929; amd. Sec. 1, Ch. 87, L. 1931.

2620.46. Penalty. Any person, firm or corporation violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for not less than thirty days (30) nor more than six months (6), or by both such fine and imprisonment.

History: En. Sec. 41, Ch. 93, L. 1929.

2620.47. Skimmed milk—regulation of sale. Milk from which cream has been removed, if such is otherwise wholesome and unadulterated, may be sold as such to makers of skim milk cheese or other manufacturers or to a consumer as hereinafter defined; but in the latter case only from vessels legibly marked with the words "skimmed milk" in plain black letters upon a light colored background and each letter being at least one inch (1) high and one-half ($\frac{1}{2}$) inch wide, and said words being placed on the top or side of each vessel. These requirements, however, shall not apply to skimmed or separated milk delivered to any patron of the creamery who regularly sells whole milk to the proprietor thereof, but all skimmed milk so delivered shall first be pasteurized at a temperature of at least one hundred and forty-five degrees (145°) Fahrenheit and held for thirty minutes (30) before it is returned to the patrons.

History: En. Sec. 42, Ch. 93, L. 1929.

2620.48. Adulterated milk—regulations—labeling of cans. No person shall sell or exchange, or offer or expose for sale or exchange, as milk or cream, any unclean, impure, adulterated, or unwholesome milk or cream, or unclean, impure, adulterated, colored, or unwholesome milk or cream, or sell or exchange or offer or expose for sale or exchange, any such substance in imitation or semblance of milk or cream, which is not milk or cream, nor shall he sell or exchange or offer or expose for sale or exchange, any such substance as and for milk or cream or sell or exchange, or offer or expose for sale or exchange, any article of food, made from such milk

or cream, or any article of human food manufactured from any such milk or cream.

Any person delivering milk or cream to any butter or cheese factory, condensed milk gathering station, or railway station, to be shipped to any city, town or village, shall be deemed to expose or offer the same for sale whether the said milk or cream is consigned to himself or another. Each and every can thus delivered, shipped or consigned, if it be not pure milk or cream, must bear a label or card upon which shall be plainly and legibly stated the constituents or ingredients of the contents of the can. There shall be no limit to the percentage of fat contained in unadulterated milk or cream sold to creameries for the sole purpose of manufacture into butter.

History: En. Sec. 43, Ch. 93, L. 1929.

2620.49. Pasteurization defined. The terms "pasteurization," "pasteurized," "pasteurize," and similar terms shall be taken to refer to the process of heating every particle of milk or milk products, for the elimination therefrom of organisms harmful to human beings, which process shall consist of one of the two following methods:

(a) Uniformly heating such milk, skim milk or cream, as the case may be, and holding the same at a minimum temperature of one hundred and forty-five degrees (145°) Fahrenheit for a period of not less than thirty minutes or more than one hour.

(b) The flash method which consists of heating such milk, skim milk or cream to a temperature of at least one hundred and eighty-five degrees (185°) Fahrenheit.

History: En. Sec. 44, Ch. 93, L. 1929.

2620.50. Creameries to pasteurize milk. All milk or cream used in any creamery within the state of Montana for the purpose of being made into butter for sale or other commercial purposes, shall be pasteurized by one of the two methods required in this act. A creamery is defined as a place where the milk or cream from three or more herd of cows, owned and kept independently of one another, is used for making butter for sale or other commercial purposes.

History: En. Sec. 45, Ch. 93, L. 1929.

2620.51. Ice cream factories to pasteurize milk and cream. All milk or cream used in the manufacture of ice cream made for sale within the state of Montana shall be pasteurized before being made into such ice cream and all butter used in the manufacture of ice cream made for sale, shall be made from pasteurized materials. The methods of pasteurization employed shall be one of the two methods required in this act.

It is provided, however, that ice cream may be made without pasteurization and sold, when all milk or cream used in its manufacture is from cows that have been tuberculin tested within one year preceding the date of such manufacture and found to be non-reacting, and when all other requirements of the laws of the state of Montana have been complied with. That in each and all places within the state of Montana where ice cream is sold, and the provisions of this act have been complied with, a notice issued under the authority of the division of farming and dairying of the state department of agriculture, labor and industry and counter-signed

by the chief of said division of farming and dairying, shall be posted in a conspicuous place, informing the public that the ice cream sold or offered for sale there is made from pasteurized materials, or from milk or cream from tuberculin tested and non-reacting cows as the case may be.

History: En. Sec. 46, Ch. 93, L. 1929.

2620.52. Pasteurization apparatus and records. All apparatus used for the pasteurization of milk, skim milk or cream shall be kept in strictly clean and sanitary condition and every pasteurizing plant shall be equipped with sufficient recording thermometer devices to accurately record the temperature to which, and the length of time for which the pasteurized product has been heated. All recording thermometer devices used in the pasteurization of any milk, skim milk or cream must be approved by the department. Any person using pasteurizing apparatus within the state of Montana, shall date, preserve, and keep on file for a period of not less than two months after the same are made, all records made by such thermometer, or in lieu of such preservation may deliver such records to any public officer authorized by law or ordinance to receive the same, and said records shall, at all times be open to the inspection of said department, the state board of health, the livestock sanitary board, and all other state, county and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

History: En. Sec. 47, Ch. 93, L. 1929.

2620.53. Pasteurization advertising on containers. It shall be unlawful for any person, firm or corporation by himself, or itself, or by his or its servant, agent or employee, to sell, offer for sale, or exchange, or have in his or its possession for sale or exchange, any milk, skim milk, cream, butter, or ice cream in any container or package, marked, labelled, or in any other way designating the contents thereof as "pasteurized," unless the same has been treated by such a process of pasteurization as is required by the laws of the state of Montana, or has been made from pasteurized materials.

History: En. Sec. 48, Ch. 93, L. 1929.

2620.54. Penalty. Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of the preceding five sections of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00) or by imprisonment in the county jail for not less than ten days nor more than sixty days, or by both fine and imprisonment.

History: En. Sec. 49, Ch. 93, L. 1929.

2620.55. Regulation and labeling of imported dairy products. Every person, company, or corporation selling or offering for sale in the state of Montana such food products as eggs, butter, or any dairy products, imported from foreign countries, shall affix by pasting upon such food products sold or offered for sale, or upon the case or package in which such food products may be contained, a label upon which shall be printed the name of the country or countries from which such product has been

imported, the date when shipped, and the date when received by the person, company, or corporation selling or offering same for sale.

History: En. Sec. 50, Ch. 93, L. 1929.

2620.56 Registry of names and trade marks. When any dealer in dairy products wishes to retain for himself a name, brand or trade mark, the same may be registered with the state department of agriculture, labor and industry, and on no account shall that name, brand or trade mark be used by another, unless duly consigned, given or sold to him by the originator or by the one to whom it belongs.

History: En. Sec. 51, Ch. 93, L. 1929.

2620.57. Other licenses for producers of dairy products. The provisions of this act relative to the issuance of licenses have reference only to such licenses as are required to be procured from the department of agriculture, labor and industry of the state of Montana. Nothing herein contained shall be deemed to repeal section 3282 of the revised codes of Montana, pertaining to the issuance of licenses by the livestock sanitary board of Montana to the several producers of dairy products enumerated in said act.

History: En. Sec. 52, Ch. 93, L. 1929.

2620.58. Anti-monopoly statutes made applicable to producers of dairy products. The provisions of sections 10904 to 10911 inclusive, relating to monopoly in the purchase or sale of commodities and products in general use, are hereby expressly made applicable to all persons, firms, co-partnerships and corporations engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, who shall violate any of the provisions of said sections or any of them. All milk, cream, butter fat, butter, cheese, ice cream and other dairy products are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 53, Ch. 93, L. 1929.

2620.59. Penalty for interference with officers of department. It shall be unlawful for any person or persons to in any manner interfere with any duly authorized officer, agent or inspector of the department of agriculture, labor and industry of the state of Montana in the making of any of the inspections or in the taking of any of the samples required to be made or taken by such officer, agent or inspector under the terms of this act, providing such inspection is made by the officer during normal business hours, Sundays and holidays included.

No person owning, operating, or in charge of any creamery, factory, store, or other place of business which is subject to inspection or entry by an officer, agent or inspector of said department for the performance of any of the duties enjoined on such officer, agent or inspector by this act, shall refuse to allow said entry or inspection by said officer, agent or inspector, nor in any manner obstruct the same. A violation of the provisions of this section shall constitute a misdemeanor and shall subject the offender to a fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00) or to imprisonment in the county jail

for not less than one nor more than thirty days or to both such fine and imprisonment.

History: En. Sec. 54, Ch. 93, L. 1929.

2620.60. General penalties for violation of act. Any person who shall violate any of the provisions of this act, or who shall fail to comply with the regulations prescribed in this act, or who shall fail or neglect to obey any lawful order of the department of agriculture, labor and industry of the state of Montana or the commissioner or any other officer thereof, made pursuant to the authority of this act, shall be deemed guilty of a misdemeanor and shall, unless a specific penalty is otherwise provided in this act for such offense, be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

History: En. Sec. 55, Ch. 93, L. 1929.

2620.61. Grading of milk and cream. Hereinafter all milk or cream purchased by any person for use in the manufacture of butter, cheese or other dairy products within the state of Montana, shall be graded as follows, and shall conform to the following grade requirements:

1. Unlawful milk or cream: All milk and cream shall be considered unlawful that is musty, rancid, dirty or with marked undesirable odors, and shall not be sold, purchased, or used for any food purposes whatsoever. (Cream and milk of this character shall be condemned.)

2. Penalty: Failure to comply with the requirements of this section shall constitute a misdemeanor, punishable as provided in section 2620.54, to which this section is added. In addition, if the purchaser is a licensed creamery, cheese factory, ice cream factory, or milk or cream buying or collecting station, or a licensed cream grader, weigher or sampler, such purchaser shall be subject to a revocation of his or its license.

History: En. Sec. 59 by Sec. 10, Ch. 39, L. 1931; amd. Sec. 1, Ch. 39, L. 1933.

2620.62. Alkaline rapid test. The alkaline rapid test with phenolphthalein indicator, shall be used in determining the acidity of all cream purchased by cream stations, creameries or plants where cream is purchased for commercial sweet cream or to be manufactured into butter, cheese, ice cream, or other dairy products, or on all cream routes. The testing solution used to be standardized by the state dairy department.

History: En. Sec. 60 by Sec. 10, Ch. 39, L. 1931.

2620.63. Milk and cream used in manufacture. All milk used in the manufacture of butter, ice cream, or cheese must conform to the standard grading for cream.

History: En. Sec. 61 by Sec. 10, Ch. 39, L. 1931.

2620.64. Use of tobacco in plants prohibited. The use of tobacco in any form, in that part of a creamery, receiving station or manufacturing plant, where cream or milk is sampled, weighed, graded, churned or pasteurized, is hereby prohibited.

History: En. Sec. 62, by Sec. 10, Ch. 39, L. 1931.

2620.65. Cream graders, weighers and samplers. All persons, firms, co-partnerships, corporations or marketing associations of every descrip-

tion, receiving or purchasing milk or cream, and all persons collecting on milk or cream routes, milk or cream for the manufacture of cheese, ice cream or butter or for distribution as commercial sweet cream, shall provide a licensed cream grader, weigher and sampler at each point where milk or cream is purchased.

History: En. Sec. 63 by Sec. 10, Ch. 39, L. 1931.

2620.66. Cream grader, weigher and sampler license and examination. No person shall grade, weigh or sample any milk or cream used or to be used in the manufacture of butter, cheese or other dairy products in the state of Montana, without first procuring a license as a cream grader, weigher and sampler from the department of agriculture, and passing such examination therefor as may be provided by said department; provided, however, that temporary permits pending the taking of such examination may be issued by the department for a period of not to exceed thirty (30) days. A fee of two dollars (\$2.00) shall be paid by the applicant for such license or permit and said license shall expire and be renewable on December 31st of each year.

History: En. Sec. 64 by Sec. 10, Ch. 39, L. 1931.

2620.67. Employment unlicensed persons prohibited. Any creamery, cheese factory or other buyer of milk products for manufacturing purposes, who shall knowingly employ as a Babcock Test operator or as a milk and cream grader, weigher and sampler, any person whose license as such, has been revoked, shall be subject to a revocation of its own license.

History: En. Sec. 65 by Sec. 10, Ch. 39, L. 1931.

2620.68. Posting price of butter fat required. All creameries, cheese factories or other buyers of milk products for direct sale or for manufacturing purposes, shall post each day in some conspicuous place in their factory or place of business, a schedule of the prices, which they pay for butter fat.

History: En. Sec. 66 by Sec. 10, Ch. 39, L. 1931.

2620.69. Penalties. The violating of any of the provisions of this act for which no other penalty is provided, shall constitute a misdemeanor and be punishable as provided in section 2620.54.

History: En. Sec. 11, Ch. 39, L. 1931.

2621-2625. Repealed—Chapter 93, laws of 1929.

2625.1. Sale of colored oleomargarine or imitation butter unlawful. Hereafter no person, firm or corporation shall, within the state of Montana, manufacture, sell, offer for sale or possess with the intent to sell any oleomargarine or any substance made either wholly or in part from vegetable or animal fats or oils (not from milk or cream), which said oleomargarine or other substance is either colored like or in imitation of butter or in any shade of yellow, or is made, composed or compounded in whole or in part of any material or ingredient causing the same to resemble the color of butter or any shade of yellow.

History: En. Sec. 1, Ch. 120, L. 1931.

2625.2. Unlicensed person not to participate in sale of oleomargarine. Hereafter no person, firm or corporation, not licensed as an oleomargarine

dealer as required by law, shall, in the course of business, either personally, or through any clerk, agent, servant or employee order or procure for or at the request of any person, any oleomargarine or any other substance named in section 2625.1, or participate or aid in the procuring or delivery of the same to any person or on any account whatsoever.

History: En. Sec. 2, Ch. 120, L. 1931.

2625.3. Penalty. Any person, firm or corporation, and any clerk, agent, servant or employee of any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars and not more than \$500.00 or by imprisonment in the county jail not less than one and not more than thirty days or by both such fine and imprisonment. Each day that any violation of this act shall exist or occur, shall constitute a separate offense, punishable by like fine or imprisonment.

History: En. Sec. 3, Ch. 120, L. 1931.

2626-2633. Repealed—Chapter 93, laws of 1929.

2634. Repealed—Chapter 189, laws of 1931.

2634.1. Egg dealers' license—fee. Every person engaged in the business of buying, selling or dealing in eggs, other than those of own production, and those persons, firms or corporations who do not buy and sell more than an average of twenty-five (25) cases of eggs per month for any one year, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such licenses shall be five dollars (\$5.00) for dealers buying eggs for resale, and twenty dollars (\$20.00) for dealers buying eggs for resale at wholesale. The license shall be posted in a conspicuous place in each place of business. Such licenses shall expire March 31st each year after the date of issue.

History: En. Sec. 1, Ch. 189, L. 1931.

2634.2. Remittance of fees. All license fees shall be remitted to the department of agriculture, dairy division, who shall disburse them for the enforcement of this act as provided in section 2634.10.

History: En. Sec. 2, Ch. 189, L. 1931.

2634.3. Place for testing and candling eggs to be maintained. Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of same.

History: En. Sec. 3, Ch. 189, L. 1931.

2634.4. "Candling" defined. The term "candling" as used in this chapter shall mean the careful examination in a partially dark room or place, of the whole egg by means of a strong light.

History: En. Sec. 4, Ch. 189, L. 1931.

2634.5. Certificate of candling. Every person buying eggs from the producer for resale except persons or corporations who do not sell to exceed twenty-five (25) cases of eggs in any one (1) month shall candle all eggs.

offered to him and shall refuse to buy eggs unfit for human food as defined in section 2634.6. "Rejects" shall be returned to the producer for his examination if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed on the top layer of every case of candled eggs, stating the date of candling, by whom candled and license number of licensee. Such certificate shall be printed on cards or sheets of paper not smaller in size than $2\frac{3}{8} \times 4\frac{1}{4}$ inches.

History: En. Sec. 5, Ch. 189, L. 1931.

2634.6. Eggs defined as unfit for human food. Eggs hereinafter defined shall be deemed unfit for human food.

(a) "Addled," or "white rot" means an egg that is putrid or rotten.

(b) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.

(c) "Black spot" means an egg in which the yolk has become fastened to the shell.

(d) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(e) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

(f) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

(g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than forty-eight (48) hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated."

History: En. Sec. 6, Ch. 189, L. 1931.

2634.7. Imported eggs—labeling "imported eggs." All eggs imported into the state of Montana from other states or foreign countries shall be sold as such. The case or container in which they are shipped shall have the words "foreign eggs" or the words "eggs" preceded by the name of the country or state where produced, displayed thereon in letters two (2) inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs in any form must place a sign in letters not less than four (4) inches in size in some conspicuous place where the customer entering their place of business can see it, to read: "We use Foreign Eggs" or the same words with the exception that the name of the country or state where the eggs were produced may be substituted for the term "foreign."

History: En. Sec. 7, Ch. 189, L. 1931.

2634.8. Notice to purchaser of grade of eggs. It shall be unlawful for any person to sell, offer or expose for sale any eggs, for human consumption, other than those of his own production, without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality and size or weight of such eggs, according to the standards prescribed by the commissioner of agriculture, by stamping or printing on

the container of any such eggs, such grade or quality and size or weight, or in the case said eggs are offered for sale in bulk, without displaying in a conspicuous place at the point where such eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving such grade, quality, size and weight.

History: En. Sec. 8, Ch. 189, L. 1931.

2634.9. Invoice to show grade of eggs. Every person other than the producer, and except persons or corporations who do not sell to exceed twenty-five (25) cases of eggs in any one (1) month, in selling eggs to a retailer shall furnish to such retailer an invoice showing the exact grade or quality of such eggs according to standards prescribed by the commissioner of agriculture.

History: En. Sec. 9, Ch. 189, L. 1931.

2634.10. Rules and regulations concerning enforcement of act to be made by commissioner. It shall be the duty of the commissioner of agriculture to enforce the provisions of this act and to make such rules and regulations as may be necessary for the enforcement of this act.

History: En. Sec. 10, Ch. 189, L. 1931.

2634.11. Penalties—revocation of license. Every person failing to comply with the requirements of the act as to license or violating any provisions of this act shall be guilty of a misdemeanor, and upon conviction for the first offense shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than seventy-five dollars (\$75.00). Upon conviction for the second or any subsequent violation of the foregoing provisions of the act the violator shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), and, in addition thereto as part of the penalty imposed, the court may in its discretion authorize the state commissioner of agriculture to withhold, suspend or revoke the license of the party so convicted either permanently or for a limited time to be specified in the judgment.

History: En. Sec. 11, Ch. 189, L. 1931.

2635-2639. Repealed—Chapter 189, laws of 1931.

CHAPTER 241

MILK CONTROL BOARD

Section 2639.1.	Declaration of emergency.
2639.2.	Purpose of act.
2639.3.	Definitions.
2639.4.	Milk control board created—members—expenses—employees.
2639.5.	Supervision of distribution and sale of milk—powers of board concerning.
2639.6.	When powers of board to be exercised.
2639.7.	Investigations concerning prices—fixing minimum prices.
2639.8.	Dealers may be required to be licensed.
2639.9.	Dealers to keep records—license fee—assessment to defray board's expense—disposal of funds.
2639.10.	Cooperative associations not interfered with by act—prices.
2639.11.	Penalty for violations.
2639.12.	Period of emergency.
2640.	Regulation of dairying.

2639.1. Declaration of emergency. It is hereby declared that a public emergency exists growing out of the unhealthful, unfair, unjust, destructive and demoralizing trade practices now obtaining in the production and distribution of milk and cream in this state, which impair the dairy industry in this state and the constant supply of pure, wholesome milk to the inhabitants of the state.

History: En. Sec. 1, Ch. 189, L. 1935.

2639.2. Purpose of act. The general purpose of this law is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices. It is enacted in the exercise of the police powers of the state.

History: En. Sec. 2, Ch. 189, L. 1935.

2639.3. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency, created by this act, to be known as the milk control board.

"Person" means any person, firm, corporation or association.

"Producer" means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor or producer-distributor.

"Association" means any organized group of dealers, in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any city, town or community of the state, or two or more of the same designated by the board as a natural marketing area.

"Milk" means fluid milk and cream sold for consumption as such.

"Consumer" means any person other than a dealer who purchases milk for fluid consumption.

History: En. Sec. 3, Ch. 189, L. 1935.

2639.4. Milk control board created—members—expenses—employees. There is hereby constituted a milk control board to consist of the executive officer of the livestock sanitary board as chairman, the chief of the dairy division of the department of agriculture and a third member to be appointed by the governor for a period of four (4) years, whose compensation shall be fixed by the governor. The board shall be allowed their necessary expenses and they may employ necessary assistants and appoint agents, but all expenditure under this act shall be paid from the receipts hereunder.

History: En. Sec. 4, Ch. 189, L. 1935.

2639.5. Supervision of distribution and sale of milk—powers of board concerning. The board shall have power to supervise, regulate and control the distribution and sale of milk for consumption within the state and in administering this act shall have the power to conduct hearings, subpoena and examine under oath dealers with their records, books and accounts

and any other person from whom information may be declared to carry out the purpose and intent of this act and any member of the board may sign subpoenas and administer oaths to witnesses. The board may adopt, promulgate and enforce all rules and orders necessary to carry out the provisions of this act and any member of the board or its representative shall have access to and may enter at all reasonable hours all places where milk is being produced, distributed or sold. The board may act as mediator or arbitrator to settle any controversy or issue among or between producers, dealers and consumers any of whom may petition the board in writing to change prices or conditions in any market area.

History: En. Sec. 5, Ch. 189, L. 1935.

2639.6. When powers of board to be exercised. The board shall not exercise its power in any market except upon written application of an association, organized under regulations satisfactory to the board, and supplying a substantial portion of the milk in that community.

History: En. Sec. 6, Ch. 189, L. 1935.

2639.7. Investigations concerning prices—fixing minimum prices. The board shall investigate what are reasonable costs and charges for producing, hauling, handling, processing and/or other services performed in respect to milk, and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and the purchasing power of the public.

1. The board after making such investigations, may fix by official order:

(a) The minimum prices to be paid by milk dealers to producers and others for milk in its various grades and uses. The order of the board with respect to the minimum prices to be paid to producers and others shall apply to the locality or zone in which the milk is produced, the market or markets in which milk so produced is sold, and may vary in different localities or zones or markets according to varying uses and different conditions. Each order fixing prices or handling charges may classify milk by forms, classes, grades or uses as the board may deem advisable and may specify the minimum prices therefor.

(b) The minimum wholesale or retail prices to be charged for milk handled within the state for fluid consumption and wheresoever produced, when sold by milk dealers to consumers; by stores to consumers except for consumption on the premises where sold; by milk dealers to other milk dealers.

A minimum wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

History: En. Sec. 7, Ch. 189, L. 1935.

2639.8. Dealers may be required to be licensed. The board shall require all dealers in any market designated by said board to be licensed by said board. The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing.

History: En. Sec. 8, Ch. 189, L. 1935.

2639.9. Dealers to keep records—license fee—assessment to defray board's expense—disposal of funds. All dealers in any market designated by the board shall keep such record as the board directs. The board shall collect from each licensed dealer an annual fee not to exceed \$10.00 for each dealer subdivision as defined above. The board shall assess each distributor and/or producer-distributor one cent (1c) per hundred-weight on all fluid milk sold by said distributor and/or producer-distributor, which amount shall be collected at such time and in such manner as shall be designated by the board and said assessment shall be used only as it becomes necessary to defray the expenses of the board. Any producer selling to a distributor shall bear one-half ($\frac{1}{2}$) pro rata of said sum. All moneys received by the board shall be deposited with the state treasurer, and all such receipts are hereby appropriated for the purpose of this act.

History: En. Sec. 9, Ch. 189, L. 1935.

2639.10. Cooperative associations not interfered with by act—prices. No provision of this act shall be deemed or construed to prevent or abridge the right of a cooperative corporation or association organized under the laws of the state of Montana and engaged in marketing or making collective sales of milk produced by its members, from blending the net proceeds of all its sales in various classes and paying its producers such blended price, with such deductions therefrom and/or differentials as may be authorized under contracts between such corporation and its members, or from making collective sales of the milk of its members and/or other producers represented by or marketing through it at a blended price based upon the sales thereof in the various classes and markets, or to prevent or abridge the right of any milk dealer from contracting for his milk with such cooperative association upon such basis, or to affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation, or to impair or affect any contracts which any such cooperative association has with milk dealers or others, or affect or abridge the rights and powers of any such cooperative association conferred by the laws of the state of Montana under which it is incorporated; provided, that the prices to be paid for milk marketed by or through any such corporation shall be those fixed by the order of the board.

History: En. Sec. 10, Ch. 189, L. 1935.

2639.11. Penalty for violations. A violation of any provision of this act or of any rule or order of the board, including a failure to answer subpoena or to testify before the board, shall be a misdemeanor punishable by a fine not exceeding one hundred dollars (\$100.00), or by imprisonment

not exceeding ninety (90) days, or both, and each day during which such violation shall continue shall be deemed a separate violation.

History: En. Sec. 11, Ch. 189, L. 1935.

2639.12. Period of emergency. The period of public emergency above mentioned shall be until such date as the legislature may, by joint resolution, designate to be the termination thereof, and shall effect the repeal of this act.

History: En. Sec. 12, Ch. 189, L. 1935.

2640. Regulation of dairying. The regulation of the industry of dairying by the department of agriculture, labor, and industry is provided for by sections 3555 to 3572 of this code.

History: New section recommended by code commissioner, 1921.

CHAPTER 242

PROTECTION OF PUBLIC WATER SUPPLY

Section 2641.	State board of health to have control of public water supply.
2642.	Examination of waters.
2643.	Publication of orders, rules and regulations.
2644.	Analysis of water—rules and regulations concerning.
2645.	Disposition of fees collected.
2646.	Penalty for violation of regulations.
2647.	Employment of agents and servants.
2648.	Duties of the board.
2649.	Pollution of waters.
2650.	Protection of watersheds.
2650.1.	Record of well drilling to be kept as required by state board of health.
2650.2.	Information concerning wells to be public records.
2650.3.	Penalties.
2651.	Complaints and investigations.
2652.	Agents and servants of boards may enter buildings.
2653.	Appeals to the district court from orders of the state board of health.
2654.	Jurisdiction of the district court.
2655.	Establishment of experimental stations.
2656.	Biennial reports.
2657.	Penalties for violations of act.

2641. State board of health to have control of public water supply. The state board of health shall have the general oversight and care of all inland waters and of all streams, lakes, and ponds used by any city, town, or public institution, or by any water or ice company in this state, as sources of water supply for domestic use, and of all springs, streams, and water-courses tributary thereto. It shall be provided with maps, plans, and documents suitable for such purposes, and shall keep records of all its transactions relative thereto.

History: En. Sec. 1, Ch. 177, L. 1907;
Sec. 1559, Rev. C. 1907; re-en. Sec. 2641,
R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366,
379, 16 P 2d 1.

2642. Examination of waters. Said state board of health may cause examination of waters to be made to ascertain their purity and fitness for domestic use, or their liability to impair the interests of the public or of persons lawfully using them, or to imperil the public health. It may make rules and regulations to prevent pollution, and to secure the sanitary protection of all such waters as are used for domestic purposes.

History: En. Sec. 2, Ch. 177, L. 1907;
Sec. 1560, Rev. C. 1907; re-en. Sec. 2642,
R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366,
379, 16 P 2d 1.

2643. Publication of orders, rules and regulations. The publication of an order, rule, or regulation made by the state board of health under the provisions of this act in a newspaper of the city or town in which such order, rule, or regulation is to take effect, or, if no newspaper is published, in such city or town, the posting of a copy of such order, rule, or regulation in a public place in such city or town, shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed, and recorded, with a copy of the notice, in the office of the clerk of such city or town, shall be admitted as evidence of the time at which, and the place and manner in which the notice was given.

History: En. Sec. 3, Ch. 177, L. 1907; Sec. 1561, Rev. C. 1907; re-en. Sec. 2643, R. C. M. 1921.

2644. Analysis of water—rules and regulations concerning. The state board of health shall make and publish in the monthly bulletin of that board, rules and regulations for the collection of samples and analyses of water, either natural or treated, furnished by municipalities, corporations, companies, or individuals to the public, and shall fix the fees for such services, rendered under said rules and regulations, to cover the cost of the service.

History: En. Sec. 1, Ch. 126, L. 1917;
re-en. Sec. 2644, R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366,
379, 16 P 2d 1.

2645. Disposition of fees collected. The fees collected by the state board of health under this act shall be turned over to the state treasurer who shall place them in the general fund of the state of Montana.

History: En. Sec. 2, Ch. 126, L. 1917; re-en. Sec. 2645, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1925.

2646. Penalty for violation of regulations. Every corporation, railway, common carrier, company, or individual that shall fail to comply with the regulations prescribed by the state board of health under this act, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars.

History: En. Sec. 3, Ch. 126, L. 1917; re-en. Sec. 2646, R. C. M. 1921.

2647. Employment of agents and servants. Said state board of health may appoint, employ, and fix the compensation of such agents, clerks, servants, engineers, and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water and of the rules and regulations of said board to be enforced.

History: En. Sec. 4, Ch. 177, L. 1907;
Sec. 1562, Rev. C. 1907; re-en. Sec. 2647,
R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366,
379, 16 P 2d 1.

2648. Duties of the board. Said board shall consult with and advise the authorities of cities and towns, and persons having, or about to have, systems of water supply, drainage, and sewerage, as to the most appropriate source of water supply, and the best method of assuring its purity, or as to

the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns, or persons which may be affected thereby. It shall also consult with and advise all corporations, companies, or persons engaged or intending to engage in any manufacturing or other business, whose drainage or sewage may tend to pollute any inland water, as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. Cities, towns, and all other corporations, companies, or persons shall submit to said board, for its advice and approval, their proposed system of water supply, or of the disposal of drainage or sewage, and no city, town, or person or company shall proceed to build or install or enlarge or extend any system of water supply, drainage, or sewage disposal, without first obtaining the approval of the state board of health. In this section the term "drainage" means rainfall, surface, and subsoil water only, and "sewage" means domestic and manufacturing filth and waste.

History: En. Sec. 5, Ch. 177, L. 1907; Sec. 1563, Rev. C. 1907; re-en. Sec. 2648, R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366, 379, 16 P 2d 1.

2649. Pollution of waters. No sewage, drainage, refuse, or polluting matter, of such kind and amount as either of itself or in connection with other matter will corrupt, pollute, or impair the quality of the water of any spring, pond, lake, or stream used as a source of water or ice supply by a city, town, or federal, state, or county institution, or water or ice company for domestic use, or render it injurious to health, and no human excrement shall be discharged into any such stream, spring, lake, pond, or upon their banks, or into any feeders of such spring, lake, pond or stream, unless such sewage, drainage, refuse, or polluting water shall, at the discretion of the state board of health, have been purified so as to render it harmless, in such a manner and under such conditions and restrictions as the state board of health may direct.

History: En. Sec. 6, Ch. 177, L. 1907; Sec. 1564, Rev. C. 1907; amd. Sec. 2, Ch. 66, L. 1911; amd. Sec. 1, Ch. 26, L. 1917; re-en. Sec. 2649, R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366, 379, 16 P 2d 1.

2650. Protection of watersheds. No municipal or other public or private corporation, and no company or person, shall hereafter construct, build, establish, or operate any railroad, logging-road, logging-camp, electric plant or manufacturing plant of any kind, upon or over any watershed of any public water supply system, unless such corporation, company, or person shall protect said water supply from pollution by such sanitary precautions as shall be approved by the state board of health, and any such corporation, company, or person intending to construct, build, or establish or operate any railroad, logging-road, logging-camp, electric plant, or manufacturing plant of any kind, upon the watershed of any public water supply system, shall furnish the state board of health with detailed plans and specifications of the sanitary precautions to be taken, which must be approved by said board.

History: En. Sec. 7, Ch. 177, L. 1907;
Sec. 1565, Rev. C. 1907; re-en. Sec. 2650,
R. C. M. 1921.

References
Campbell v. City of Helena, 92 M 366,
379, 16 P 2d 1.

2650.1. Record of well drilling to be kept as required by state board of health. For the purpose of preserving the health of the public and to provide the state board of health with relevant information pertaining to water supply when obtained from water wells used for furnishing water, directly or indirectly, to or for public consumption or use, it is hereby made the duty of every person, firm, or corporation, drilling or causing to be drilled, any water well within the state of Montana, intended for use or actually used in furnishing water, directly or indirectly, to or for public consumption or use, to keep a complete and accurate record of the depth and thickness and character of the different strata penetrated in the drilling of any such well, together with such other pertinent information concerning said water well and the drilling thereof as the said board of health may by rule or regulation require, such data to be furnished to the said board upon forms prescribed and furnished by it.

History: En. Sec. 1, Ch. 118, L. 1931.

2650.2. Information concerning wells to be public records. Such information as is acquired by said board under the provisions hereof shall constitute public records and as such be available to the public at all reasonable times.

History: En. Sec. 2, Ch. 118, L. 1931.

2650.3. Penalties. Any person, firm or corporation, violating the provisions of this act, or rules and regulations prescribed pursuant hereto, or the lawful orders of the state board of health under said rules and regulations, shall be deemed guilty of a misdemeanor and shall, upon conviction, thereof, be punished by a fine of not more than one hundred (\$100.00) dollars, or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 118, L. 1931.

2651. Complaints and investigations. Upon complaint to the state board of health, or the mayor or health officer of any city or town, or the managing board or officer of any public institution, or the president of an ice company, stating that manure, excrement, garbage, sewage, or any other matter which pollutes or tends to pollute the waters of any lake, pond, spring, stream, or watercourse used by such city or town, public institution, or company as a source of water supply, the said board shall cause a thorough investigation to be made of such alleged nuisance or pollution, and if, in its judgment, the public health so requires, shall, by order served upon the party causing or permitting such pollution, prohibit the continuance of such pollution, and shall order him to remove any such cause of pollution.

History: En. Sec. 8, Ch. 177, L. 1907;
re-en. Sec. 1566, Rev. C. 1907; re-en. Sec.
2651, R. C. M. 1921.

Ex Parte Investigation

This section does not provide for a pub-

lie trial, but contemplates an ex parte investigation by the state board of health; it may, therefore, upon its information from any source, and before it has heard any testimony, make a valid order prohibiting a city from polluting a stream

which is a source of water supply for domestic uses. *Miles City v. State Board of Health*, 39 M 405, 410, 102 P 696.

References

Campbell v. City of Helena, 92 M 366, 379, 16 P 2d 1.

2652. Agents and servants of boards may enter buildings. The agents and servants of said board may enter any building, structure, or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations, and orders aforesaid are obeyed.

History: En. Sec. 9, Ch. 177, L. 1907; re-en. Sec. 1567, Rev. C. 1907; re-en. Sec. 2652, R. C. M. 1921.

2653. Appeals to the district court from orders of the state board of health. Whoever is aggrieved by any order of the state board of health passed under the provisions of this act may appeal therefrom to the district court of the county in which such order shall be effective. But such notice as the court shall order shall also be given to the mayor of the city or town, or president of the water company, or any other persons interested in such order. While the appeal is pending, the order of the state board of health shall be complied with, unless otherwise authorized by the state board of health.

History: En. Sec. 10, Ch. 177, L. 1907; re-en. Sec. 1568, Rev. C. 1907; re-en. Sec. 2653, R. C. M. 1921.

References

Cited or applied as section 1568, revised

codes, in *City of Miles City v. State Board of Health*, 39 M 405, 410, 102 P 696; *Campbell v. City of Helena*, 92 M 366, 379, 16 P 2d 1.

2654. Jurisdiction of the district court. The district court of any county of the state shall have jurisdiction in equity, upon the application of the state board of health or of any person interested, to enforce its orders, or the orders, rules, and regulations of said board of health, and to restrain the use or occupation of the premises, or such portion thereof as said board may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules, and regulations of said board have been complied with.

History: En. Sec. 11, Ch. 177, L. 1907; re-en. Sec. 1569, Rev. C. 1907; re-en. Sec. 2654, R. C. M. 1921.

2655. Establishment of experimental stations. In order that the state board of health may at all times be prepared to give the best advice to cities, towns, public institutions, or private corporations, relative to the prevention or removal of pollutions of water, said board is hereby authorized to establish and maintain an experiment station for the purpose of studying the best methods of preventing pollution of water, and for the purification of water, and for the purification, disinfection, and disposal of sewage and domestic and manufacturing waste so as to prevent pollution of water, and said board is authorized to cause sanitary methods and systems in use outside of the state of Montana to be investigated and studied with a view of ascertaining their fitness for conditions in this state.

History: En. Sec. 12, Ch. 177, L. 1907; re-en. Sec. 1570, Rev. C. 1907; re-en. Sec. 2655, R. C. M. 1921.

2656. Biennial reports. The state board of health shall biennially make a report to the legislature, through the governor, of its doings for the

preceding period, recommending measures for the prevention of the pollution of such waters, and for the removal of polluting substance in order to protect and develop the rights and property of the state and municipalities therein, and to protect the public health, and recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health, and for the purification and prevention of pollution of the ponds, lakes, springs, and inland waters of the state. It shall also give notice to the attorney general of any violation of law relative to the pollution of water supplies and inland waters.

History: En. Sec. 13, Ch. 177, L. 1907; re-en. Sec. 1571, Rev. C. 1907; re-en. Sec. 2656, R. C. M. 1921.

2657. Penalties for violations of act. Whoever violates any of the provisions of this act, or any rule, regulation or order of the state board of health, made under the provisions of this act, shall be punished for each offense by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

History: En. Sec. 14, Ch. 177, L. 1907; re-en. Sec. 1572, Rev. C. 1907; re-en. Sec. 2657, R. C. M. 1921.

CHAPTER 243

CONSTRUCTION AND EXAMINATION OF DAMS AND RESERVOIRS

Section 2658. Dams and reservoirs—how constructed.

2659. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.

2660. Complaint against filling unsafe reservoir—duty of court to order examination.

2661. Examination and report.

2662. Withdrawal of water from unsafe structure.

2663. Proceedings when dam or reservoir is insecure.

2664. Issues and trial.

2665. Judgment.

2666. New trial and appeal.

2667. Water may be drawn off pending an appeal.

2668. Board of county commissioners may appoint experts to examine dam.

2669. Compensation of experts.

2670. Duty of board when complaint filed.

2671. Penalties.

2658. Dams and reservoirs—how constructed. No person must fill, or procure to be filled with water, any reservoir which is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein.

History: Sec. 2138, Rev. C. 1907; re-en. Sec. 2658, R. C. M. 1921.

NOTE.—Sections 2658 to 2671, are here given as they appear in sections 2138 to 2151, revised codes of 1907 as amended; being sections 3440 to 3453, political code of 1895. Earlier acts very similar in substance were sections 1 to 6, p. 221, laws of 1877, re-enacted as sections 493 to 498, 5th division revised statutes of 1879 and as sections 983 to 988, 5th division comp. statutes of 1887.

Operation and Effect

Held, that under sections 2658-2671, R.

C. M. 1921, reservoirs may be constructed for the purpose of storing flood water, in the course or at the headwaters of an adjudicated stream, provided their construction does not interfere with the use by prior appropriators of the natural flow in the stream to the extent of their appropriations. *Donich et al. v. Johnson et al.*, 77 M 229, 240, 250 P 963.

References

Cited or applied as section 2138, revised codes, in *Frederick v. Hale*, 42 M 153, 168, 112 P 70.

2659. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity. No person, association, or corporation shall construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

Upon complaint on oath being made to the state engineer by three or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it shall be the duty of the state engineer to forthwith examine, or cause to be examined, the said reservoir. If, upon such examination, the state engineer shall find that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall be his duty to notify the county attorney of the county in which the reservoir is located, setting forth his findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

In the event of either party being dissatisfied with the findings of the state engineer, he may take an appeal to the district court of the district wherein the reservoir is located, and said court shall hear and determine the matter at the earliest practical time, subject to the right of either party to take an appeal as in other civil cases; provided, that the judgment of the state engineer shall control until the final determination of the case.

History: En. Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921.

codes, before amendment, in *Frederick v. Hale*, 42 M 153, 168, 112 P 70; *Donich et al. v. Johnson et al.*, 77 M 229, 240, 250 P 963.

References

Cited or applied as section 2139, revised

2660. Complaint against filling unsafe reservoir—duty of court to order examination. Upon complaint on oath made by any person or persons, and filed in the district court, that a person, association, or corporation is filling or proposing to fill with water a reservoir, or has filled or gathered water in a reservoir, and that life and property are thereby endangered, the judge must appoint three disinterested persons, at least one of whom must be a resident of the county in which the dam or reservoir is situated, and one of whom must be a competent and experienced civil or hydraulic engineer, each of whom must take an oath that he will examine the dam and reservoir to determine as to its security to the best of his ability.

History: En. Sec. 2140, Rev. C. 1907; amd. Sec. 2, Ch. 168, L. 1917; re-en. Sec. 2660, R. C. M. 1921.

2661. Examination and report. It is the duty of the person so appointed to make a thorough examination of the dam or reservoir, and if, upon examination, they find that persons or property are endangered by reason of the dam or reservoir, and it is not secure against the pressure of the water confined therein, or the water that may be confined therein, or against rains and freshets that may occur, and if they find that the

same is secure against the occurrence of the casualties mentioned, or any of them, they must make a report in writing to the judge, which must be entered of record as a proceeding in court.

History: Sec. 2141, Rev. C. 1907; re-en. Sec. 2661, R. C. M. 1921.

2662. Withdrawal of water from unsafe structure. If, upon such examination as to the safety of such reservoir, they consider such reservoir insufficient and insecure, they must further inquire whether the danger to be apprehended is imminent, and if they are of the opinion that such danger is imminent, and that destruction of life or property may result from delay, it is their duty forthwith to draw from such reservoir the waters therein, or so much thereof as will insure safety, and they must make return of their action to the judge; and in the discharge of such duties, the persons so acting are peace officers.

History: Sec. 2142, Rev. C. 1907; re-en. Sec. 2662, R. C. M. 1921.

2663. Proceedings when dam or reservoir is insecure. If, upon examination, they are of opinion that such dam or reservoir is insecure and insufficient, but that the danger therefrom is not immediate or imminent, they must so state in their report to the judge, who must thereupon cause a copy of the report to be served on the owner or person in charge thereof, with a notice requiring him to make the same secure, or to draw the water therefrom without delay; and unless such order is complied with after hearing, the judge may order the sheriff to draw from said dam or reservoir the waters thereof.

History: Sec. 2143, Rev. C. 1907; re-en. Sec. 2663, R. C. M. 1921. For earlier history, see Sec. 2658.

2664. Issues and trial. The owner of the dam or reservoir may answer the complaint, and an issue may be joined at the hearing, and the question of the security and sufficiency of the dam or reservoir may be tried before the court or jury as in other cases.

History: Sec. 2144, Rev. C. 1907; re-en. Sec. 2664, R. C. M. 1921.

2665. Judgment. If the jury find the dam or reservoir insufficient or insecure, judgment must be entered thereon, declaring such dam or reservoir a nuisance, and that all the water be drawn therefrom. Costs may be taxed as in other cases to the losing party.

History: Sec. 2145, Rev. C. 1907; re-en. Sec. 2665, R. C. M. 1921.

2666. New trial and appeal. Any party to the proceedings may move for a new trial and appeal as in other cases.

History: En. Sec. 2146, Rev. C. 1907; re-en. Sec. 2666, R. C. M. 1921.

2667. Water may be drawn off pending an appeal. The judge may, after the verdict of the jury, and pending an appeal, order that the water be drawn from the reservoir so as to make the same secure and safe until the final determination of the proceedings.

History: En. Sec. 2147, Rev. C. 1907; re-en. Sec. 2667, R. C. M. 1921.

2668. Board of county commissioners may appoint experts to examine dam. Whenever any person is constructing a dam or reservoir, and complaint is made to the board of county commissioners that the same is

being built in an insecure and unsafe manner, and dangerous to life or property, or that when constructed will be insecure and dangerous, it is the duty of the board to appoint three experts under whose supervision the dam or reservoir must be constructed, and such reservoir must not be filled with water, nor shall any water be allowed to flow therein, until the owner thereof has filed in the office of the county clerk a certificate, signed by a majority of the persons so appointed, to the effect that such dam or reservoir is constructed in a proper manner and is safe and secure.

History: En. Sec. 2148, Rev. C. 1907; re-en. Sec. 2668, R. C. M. 1921.

2669. Compensation of experts. The persons acting as experts are entitled to a reasonable compensation for their services, to be allowed by the board and paid by the owners of the dam or reservoir.

History: En. Sec. 2149, Rev. C. 1907; re-en. Sec. 2669, R. C. M. 1921.

2670. Duty of board when complaint filed. Whenever such complaint is made to the board of commisisoners, it is the duty of the board, in case such dam or reservoir is not being constructed in a safe and secure manner, to proceed against the owner or persons constructing the same, in the manner provided for in this chapter, and any person may file a complaint and proceed against any such owner of or person constructing such dam or reservoir, as provided in this chapter.

History: En. Sec. 2150, Rev. C. 1907; re-en. Sec. 2670, R. C. M. 1921.

2671. Penalties. Any person violating any of the provisions of this chapter is punishable as provided in section 11280 of the penal code, and if death ensue by reason of any of the acts prohibited by this chapter, the person guilty of the same may be convicted of murder, manslaughter, or any other felony, as the case may be.

History: En. Sec. 2151, Rev. C. 1907; re-en. Sec. 2671, R. C. M. 1921.

CHAPTER 244

CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS

- Section 2672. Construction of scaffolds.
2673. Temporary floors for protection of workmen.
2674. Planking above scaffolds.
2675. Guarding of stairways, openings, etc.—temporary toilets.
2676. Penalty for violation of act—duty of building inspector.

2672. Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, and sufficient width, and properly secured, so as to insure the safety of persons working thereon or passing thereunder, or by the same, and to prevent the falling thereof, or of any material that may be used, placed, or deposited thereon.

History: En. Sec. 1, Ch. 107, L. 1909; re-en. Sec. 2672, R. C. M. 1921.

2673. Temporary floors for protection of workmen. It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor

below the riveters and structural steel setters, a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below, or on such temporary floor in such building; provided, however, that where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

If the floor or permanent floor of the second floor, or of any other floor above the second, or roof, is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good, substantial temporary floor shall be laid on the joists and girders of the next lower floor. For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: En. Sec. 2, Ch. 107, L. 1909; re-en. Sec. 2673, R. C. M. 1921.

2674. Planking above scaffolds. In buildings more than three stories high, where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well-secured planking, set over the heads of such persons for the full width of the scaffolding on which they are working, if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: En. Sec. 3, Ch. 107, L. 1909; re-en. Sec. 2674, R. C. M. 1921.

2675. Guarding of stairways, openings, etc.—temporary toilets. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than thirty feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors, shall be covered or properly protected; provided, that wherever such building or buildings over three stories high are being erected in any city or town, other than a residence, temporary toilets in or convenient to such building shall be maintained for the convenience of employees.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R. C. M. 1921.

2676. Penalty for violation of act—duty of building inspector. Any person violating any of the provisions of the foregoing sections shall be fined not less than one hundred dollars nor more than two hundred dollars for each offense. It is hereby made the duty of the building inspector, his deputy, or other authorities in any county, city, town, or village in the state, through the county attorney, or any other attorney, in case of failure of such owner, person, or corporation to comply with this act promptly, to take the necessary steps to enforce the provisions of this act.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R. C. M. 1921.

CHAPTER 245

ELECTRICAL CONSTRUCTION—REGULATION—MOVING STRUCTURES WHEN INTERFERENCE WITH POLES OR WIRES NECESSARY

Section 2677.	Overhead construction of light, heat, and power lines.
2678.	Space between arms on poles or appliances for high and low voltage.
2679.	Cross-arms.
2680.	Bridge arms.
2681.	Double arms.

- 2682. Guy attachments.
- 2683. Guy insulation.
- 2684. Guy clearance.
- 2685. Arc lamps.
- 2686. Wire insulation.
- 2687. Trolley and "span" wires.
- 2688. Foregoing provisions apply to current and voltage for light, heat and power.
- 2689. Provisions not applicable, and when—climbing space.
- 2690. Specifications for cross-arms—pin spacing.
- 2691. Climbing space.
- 2692. Guy insulation.
- 2693. "Aerial" cable supports.
- 2694. Poles or appliances used jointly for electric light, heat, or power wires, and telephone, telegraph or other signal wires.
- 2695. Same—climbing space—cross-arms.
- 2696. Guy insulation for joint construction.
- 2697. Two or more lines on same side of street—climbing space.
- 2698. General construction for all wires and voltage.
- 2699. Side arms.
- 2700. Guy wire and anchor protection.
- 2701. Construction of wire crossings.
- 2702. Protection of ground wires and cables run vertically on poles or other structures.
- 2703. Generating and substation equipment, records, and warnings.
- 2704. Protective devices.
- 2705. Air-gap and oil-break switches, where required—number of workmen employed—current-breaking devices.
- 2706. Fuse requirements.
- 2707. Safety measures—head room—guarding passages, manways, etc.—grounding of wires.
- 2708. Opening to outer air for manholes.
- 2709. Violation of act a misdemeanor.
- 2710. Date for act to take effect.
- 2711. Repealing clause.
- 2711.1. Moving of structures—interference with electric wires.
- 2711.2. Notice, when and how given.
- 2711.3. Duties of the owner in such case.
- 2711.4. Interference with lines.

2677. Overhead construction of light, heat, and power lines. Any person, company, or corporation owning or using any pole or appliance on which is run, placed, erected, or maintained in the state of Montana, any wire or cable used or to be used to conduct or carry electricity for the purpose of light, heat, or power, shall provide and maintain an unobstructed climbing space adjacent to any such pole or appliance, so that persons shall be able to ascend any such pole or appliance with reasonable safety and convenience up to and through the wires, connections, attachments, and structures of any such pole or appliance, and all cases where any "buck" or reverse arm is used, or where special construction is used, there shall be provided and maintained unobstructed climbing space of not less than twenty-two inches square, omitting the area of any pole or appliance.

History: En. Sec. 1, Ch. 171, L. 1917; re-en. Sec. 2677, R. C. M. 1921.

2678. Space between arms on poles or appliances for high and low voltage. At least one standard pole-gain, or the equivalent of four feet, shall be left vacant between the nearest cross-arm on which is placed or maintained any wire or cable conducting or carrying more than four hundred and forty volts of electricity, and any cross-arm occupied by or used for wires or cables carrying four hundred and forty volts or less.

The said standard pole-gain shall be spaced not less than twenty-four inches center to center, except that one "buck" or reverse arm may be placed not more than twelve inches below any cross-arm; and provided, that this section shall be held not to apply to bridge construction; and further provided, that it shall be held not to apply to primary taps to transformers on poles; and provided further, that all such primary taps leading to transformers on poles shall be of double-braid, rubber-covered wire of at least twenty-two hundred volts insulation.

History: En. Sec. 2, Ch. 171, L. 1917; re-en. Sec. 2678, R. C. M. 1921.

2679. Cross-arms. All cross-arms shall be made from clear, straight-grained wood, or standardized material. The cross-section of wood arms shall be not less than three and one-half by four and one-half inches. The pin spacing shall be, for six-pin arms, not less than thirty-inch center for pole pin spacing, fourteen-inch side spacing, and five-inch end spacing; and four-pin arms not less than thirty-inch center for pole pin spacing, fourteen-inch side spacing and five-inch end spacing.

History: En. Sec. 3, Ch. 171, L. 1917; re-en. Sec. 2679, R. C. M. 1921.

2680. Bridge arms. Bridge arms having the same pin spacing as the standard cross-arm and a cross-section of not less than four by six inches may be installed in alleys or at alley and street intersections, wherever such construction may be proper, to provide the necessary clearance for fire-escapes and other obstructions which may be overhanging the alley. All such structures shall be provided with idle arm, or span wire, for use of workmen.

History: En. Sec. 4, Ch. 171, L. 1917; re-en. Sec. 2680, R. C. M. 1921.

2681. Double arms. Double arms, if of wood, shall be used at all line terminals, corners, and curves where there is excessive strain. All double arms must be blocked and bolted in accordance with standard practice. All poles on which wires are permanently "dead-ended" shall be double armed.

History: En. Sec. 5, Ch. 171, L. 1917; re-en. Sec. 2681, R. C. M. 1921.

2682. Guy attachments. All guy wires, when attached to poles, stubs, or other ungrounded supports, shall not reach within eight feet of the ground. Guy anchors may be installed or guy wires may be attached to rocks or other grounded supports.

History: En. Sec. 6, Ch. 171, L. 1917; re-en. Sec. 2682, R. C. M. 1921.

2683. Guy insulation. Any guy wire attached to any pole or appliance on which is run, placed, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight feet in a vertical line from the surface. In short guys in which the two insulators are required, and which will be located at the same points or near each other, two insulators may be coupled

in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. The above shall not apply to railway electrification, where at least one insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy.

History: En. Sec. 7, Ch. 171, L. 1917; re-en. Sec. 2683, R. C. M. 1921.

2684. Guy clearance. Guy wires shall be attached to poles, so as to interfere as little as possible with workmen climbing or working thereon. Every guy wire which passes either over or under an electric light or power wire, other than those attached to the guyed pole, shall be so placed and maintained as to provide a clearance of not less than three feet between the guy and any electric wire.

History: En. Sec. 8, Ch. 171, L. 1917; re-en. Sec. 2684, R. C. M. 1921.

2685. Arc lamps. No arc lamp shall be erected or maintained in the state of Montana on any pole or appliance, unless such arc lamp be so constructed and maintained as to be lowered within six feet from the surface; provided, that this section shall not include arc lamps used for ornamental street lights attached to iron pedestals or any arc lamp attached to buildings, poles, or other structures which do not carry wire other than those feeding the lamp.

History: En. Sec. 9, Ch. 171, L. 1917; re-en. Sec. 2685, R. C. M. 1921.

2686. Wire insulation. The standard insulation, wherever insulation is used, for any wire or cable run, placed, or erected in any city or town in the state of Montana, and used to conduct or carry electricity for light, heat, or power, for all voltage, shall have at least a triple-braided weather-proof cover.

History: En. Sec. 10, Ch. 171, L. 1917; re-en. Sec. 2686, R. C. M. 1921.

2687. Trolley and "span" wires. Trolley wires must readily stand the strain put upon them when in use, and shall have a double insulation from the ground. In wooden-pole construction the pole shall be considered one insulation. In all cases where "span" wires are attached to grounded supports, or on buildings or other structures, there shall be provided and maintained at least two approved insulators in any such "span" wire between the trolley and any such other structures. The outer insulators shall be placed at a distance equal to that of the curb. Any "span" wire attached to buildings or other structures shall be stranded iron or steel wire, and shall readily stand the strain put upon them in use. None of the provisions of this section shall be held to apply where "feed" wires are used in place of "span" wires.

History: En. Sec. 11, Ch. 171, L. 1917; re-en. Sec. 2687, R. C. M. 1921.

2688. Foregoing provisions apply to current and voltage for light, heat and power. All of the foregoing provisions of this act shall include current and voltage used for light, heat, or power, not to exceed seventy-five hundred volts of electricity.

History: En. Sec. 12, Ch. 171, L. 1917; re-en. Sec. 2688, R. C. M. 1921.

2689. Provisions not applicable, and when—climbing space. None of the provisions of sections 2677 to 2679, inclusive, of this code shall be held to apply to direct-current wire carrying nominally six hundred volts of electricity, and used for street railway purposes; provided, however, that an unobstructed climbing space not less than twenty-six inches in a horizontal line shall at all times be provided and maintained.

History: En. Sec. 13, Ch. 171, L. 1917; re-en. Sec. 2689, R. C. M. 1921.

2690. Specifications for cross-arms—pin spacing. All cross-arms shall be made from clear, straight-grained wood, or standardized material. No wood cross-arm shall be used having a cross-section of less than three and one-fourth by four and one-fourth inches, except where steel pins are used or where two-pin arms are used. The standard pin spacing shall be not less than sixteen inches from center to center of pole pins.

History: En. Sec. 14, Ch. 171, L. 1917; re-en. Sec. 2690, R. C. M. 1921.

2691. Climbing space. Any person, company, or corporation owning or using any pole or appliance used exclusively for telephone, telegraph, or other signal wires, shall provide and maintain an unobstructed climbing space of not less than sixteen inches.

Whenever "buck" or reverse arms are used, an unobstructed climbing space shall be left adjacent to the pole or appliance at least twenty inches square, omitting the area of any such pole or appliance; any wire or cable attached to the pole in such buck-arm construction, not less than forty inches from the nearest cross-arm, shall be held not to be an obstruction to the climbing space as herein provided.

History: En. Sec. 15, Ch. 171, L. 1917; re-en. Sec. 2691, R. C. M. 1921.

2692. Guy insulation. In all cases where guy wires pass over, under, or between electric light, heat, or power wires, they shall be permanently and effectively insulated at all times by the insertion of at least two strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six feet in a horizontal direction from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight feet from the surface in a vertical line. In short guys in which the two insulators herein required would be located at the same point, or near each other, two insulators may be coupled in series and put into the guy together. Anchor guys for guying aerial cable leads shall be insulated from the messenger wires, by being placed upon separate shims, or insulated as above specified.

History: En. Sec. 16, Ch. 171, L. 1917; re-en. Sec. 2692, R. C. M. 1921.

2693. "Aerial" cable supports. All "aerial" cables having two hundred pairs of number nineteen B & S gauge copper wires, or four hundred pairs of number twenty-two B & S gauge copper wires, shall be supported by through bolts at least five-eighths inches in diameter; at all railroad and high-tension crossings, grades, curves, and corners, such cable shall be reinforced by a strap supported by a lag-screw or through bolts at least one-half inch in diameter, or other appliance of equal strength.

History: En. Sec. 17, Ch. 171, L. 1917; re-en. Sec. 2693, R. C. M. 1921.

2694. Poles or appliances used jointly for electric light, heat, or power wires, and telephones, telegraph, or other signal wires. A separation of

at least four feet, measured at the pole, shall be provided and maintained between any telephone, telegraph, and other signal wires or cables, and electric light, heat, or power wires, carrying not to exceed four hundred and forty volts; provided, that when the telephone, telegraph, or signal wires or cables are above the electric light, heat, or power wires carrying a voltage in excess of four hundred and forty volts, the clearance shall be eight feet. Telephone, telegraph, and other signal wires or cables shall preferably be run and maintained below electric light, heat, and power wires or cable. In no case shall telephone, telegraph, or other signal wires smaller than No. 12 N. B. S. gauge copper wire, or No. 12 B. W. G. iron wire be run or maintained as "lead" wires above electric light, heat, or power wires; provided, that this shall be held not to apply to telephone, telegraph, or signal wires used exclusively to maintain electric light, heat, and power line.

History: En. Sec. 18, Ch. 171, L. 1917; re-en. Sec. 2694, R. C. M. 1921.

2695. Same — climbing space — cross-arms. All telephone, telegraph, or other signal wires placed on poles jointly used for electric light, heat, and power wires, shall have an unobstructed climbing space of not less than twenty-six inches. All telephone, telegraph, or other signal wires placed on poles jointly used for light, heat, or power wires shall be placed and maintained on cross-arms, except that brackets may be maintained on one side of the pole not nearer than two feet below the lowest cross-arm, for the purpose of carrying duplex wires or cables to distribute telephone, telegraph, or signal wires.

History: En. Sec. 19, Ch. 171, L. 1917; re-en. Sec. 2695, R. C. M. 1921.

2696. Guy insulation for joint construction. All joint construction for wires or cable of different and conflicting voltage, as outlined in the preceding section, shall be guyed in the same manner as specified for electric light, heat, and power construction.

History: En. Sec. 20, Ch. 171, L. 1917; re-en. Sec. 2696, R. C. M. 1921.

2697. Two or more lines on same side of street—climbing space. In all cases where there are two or more pole lines used for telephone, telegraph, or other signal wires, on the same side of any street, alley, or public highway, provided such lines are not parallel on a horizontal plane, the cross-arms shall have an unobstructed climbing space of not less than twenty-six inches.

History: En. Sec. 21, Ch. 171, L. 1917; re-en. Sec. 2697, R. C. M. 1921.

2698. General construction for all wires and voltage. All poles shall be of the best quality cedar or other standardized material, except poles carrying one telephone circuit for rural or farmers' use. No pole shall be maintained which has not sufficient strength to safely sustain itself when supporting wires are removed.

History: En. Sec. 22, Ch. 171, L. 1917; re-en. Sec. 2698, R. C. M. 1921.

2699. Side arms. When necessary to avoid obstruction, a side or offset arm may be used. In all such cases a special arm of the same dimensions as the standard arm shall be used. This arm shall be bored for pins and bolts and installed with an angle-iron brace. Wherever a transformer

is used on any such pole on which side arm construction is used, an idle arm shall be provided.

History: En. Sec. 23, Ch. 171, L. 1917; re-en. Sec. 2699, R. C. M. 1921.

2700. Guy wire and anchor protection. Where guy wires installed on public highways are subject to mechanical injury, they shall be protected with a shield. This shield may consist of an iron pipe or a suitable wood shield, which may be clamped on the guy itself. The guy shield shall extend from the anchor rod up to a height of approximately seven feet.

History: En. Sec. 24, Ch. 171, L. 1917; re-en. Sec. 2700, R. C. M. 1921.

2701. Construction of wire crossings. Where wires used for power, heat, or light, cross telephone, telegraph, or signal wires, or where the above mentioned wires cross railroad tracks, the methods of future construction or betterments, and hereafter all future electrical construction in the state of Montana not herein provided for, shall conform to the national electrical code of the United States bureau of standards; this code to be interpreted and enforced by the railroad and public service commission of Montana. This section shall not be held to conflict with any of the specific provisions of this act.

History: En. Sec. 25, Ch. 171, L. 1917; re-en. Sec. 2701, R. C. M. 1921.

2702. Protection of ground wires and cables run vertically on poles or other structures. Any person, company, or corporation owning or using any poles or appliances for light, heat, or power, or poles used jointly for light, heat, or power wires, and telephone, telegraph, and other signal wires, on which is run any ground or vertical wires, shall cause all such wires, except railway auxiliary negative taps, to be incased in a channel iron conduit or metal casing from the ground to a point approximately seven feet above the ground, so as to protect any such wires from mechanical injury, the remaining portion to be wholly incased in a casing equal in durability and insulating efficiency to a wooden casing not less than one and one-fourth inches thick, except that grounds for four hundred and forty volts or less, and railway auxiliary negative taps, shall be required to be incased down the pole to a point five feet below the lowest cross-arm. All metal casings to be permanently and effectively grounded; provided, that this section shall be held not to apply to wires or cables which lead from overhead to underground systems, except in case of joint construction; and further provided, that it shall not apply to high-tension lines.

History: En. Sec. 26, Ch. 171, L. 1917; re-en. Sec. 2702, R. C. M. 1921.

2703. Generating and substation equipment, records, and warnings. In every generating and substation used for light, heat, or power, there shall be kept a log-book or record showing the changes in the condition of operation, including the starting and stopping of electrical supply equipment, the name of each foreman or workman locally in charge of work, and all unusual occurrences and accidents.

The log-book or record shall be signed by the person in charge before being relieved. He shall keep within sight an operating diagram or equivalent device, indicating whether electrical supply circuits are open or

closed, and where work is being performed. On circuits carrying normally in excess of seventy-five hundred volts, the operator in charge shall place "Men at Work" tags upon switches controlling any circuits upon which men are known to be working, and it shall be his duty to enforce the safety rules, and permit only authorized persons to approach the equipment or lines.

This section shall not apply to isolated plants, generating current for telegraph, telephone, and signaling purposes.

History: En. Sec. 27, Ch. 171, L. 1917; re-en. Sec. 2703, R. C. M. 1921.

2704. Protective devices. There shall be provided in conspicuous and suitable places in electrical stations and shops, a suitable and sufficient supply of first-aid and protective devices, all of approved kinds and qualities; the kinds and number of such devices will depend on the requirements of each case, as may be from time to time prescribed by the state industrial accident board, and it shall be the duty of the said state industrial accident board to prescribe such necessary protective devices. All such prescribed devices shall be kept, when not in use, in their regular location and in good working order.

History: En. Sec. 28, Ch. 171, L. 1917; re-en. Sec. 2704, R. C. M. 1921.

2705. Air-gap and oil-break switches, where required—number of workmen employed—circuit-breaking devices. All circuits of four hundred and forty volts or more, where originating or terminating in any inclosure or building, or used for underground, shall be provided with air-gap switches or other approved devices; if any of the above circuits are of seven and one-half kilowatts or more capacity, they shall, in addition, be provided with an oil-break switch, or other approved device which will safely open the circuit under the load.

There shall be no less than two experienced electricians employed on any work or maintenance to be performed on any electrical wires or equipment connected therewith carrying nominally six hundred volts or more; provided, however, that this shall not apply to the operation of electrical equipment, nor in cases of emergency.

Direct-current feeders of two hundred and fifty volts or over shall be protected by approved circuit-breaking devices.

History: En. Sec. 29, Ch. 171, L. 1917; re-en. Sec. 2705, R. C. M. 1921.

2706. Fuse requirements. All fuses shall be inclosed, or expulsion type, or other approved "national electrical code" standards.

History: En. Sec. 30, Ch. 171, L. 1917; re-en. Sec. 2706, R. C. M. 1921.

2707. Safety measures—head room—guarding passages, manways, etc.—grounding of wires. Where necessary, all forms of electrical apparatus shall be effectively grounded for the protection of persons.

Wherever wires or conductors are installed within inclosures or buildings, in and about switchboards and other appliances where conductors are run, placed, or erected, a clear head room of six and one-half feet above the floor or surface must be maintained, or the wires be effectively guarded. All apparatus, passages, manways, and other places where persons may enter into, must be protected with efficient guards in accordance

with standard practice; provided, this shall not be held to apply to electrical machinery and auxiliary devices carrying six hundred volts or less.

When lines or wires carrying seventy-five hundred volts or more are disconnected from their source of power, for work to be performed thereon, said lines or wires shall be effectively grounded for the protection of workmen.

History: En. Sec. 31, Ch. 171, L. 1917; re-en. Sec. 2707, R. C. M. 1921.

2708. Opening to outer air for manholes. The openings to outer air for any manhole used for light, heat, or power shall be circular in shape, and shall not be less than twenty-four inches in diameter.

The opening to outer air for any manhole used for telephone, telegraph, or other signal wires shall be circular in shape, and shall be not less than twenty inches in diameter.

Whenever persons are working in any manhole, whose opening to the outer air is less than three feet from the rail of any railway or street-car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

History: En. Sec. 32, Ch. 171, L. 1917; re-en. Sec. 2708, R. C. M. 1921.

2709. Violation of act a misdemeanor—penalty. Every corporation or joint-stock company or individual, which shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

History: En. Sec. 33, Ch. 171, L. 1917; re-en. Sec. 2709, R. C. M. 1921.

2710. Date for act to take effect. This act shall go into effect on the first day of May, 1917, from which time all new construction shall conform to the provisions hereof, and all betterments on existing plants and equipment shall be made to conform to the provisions of this act.

History: En. Sec. 34, Ch. 171, L. 1917; re-en. Sec. 2710, R. C. M. 1921.

2711. Repealing clause. All acts or parts of acts, and all ordinances or parts of ordinances, of cities and towns in the state of Montana, in conflict with this act, are hereby repealed, and hereafter no ordinance in conflict with any provisions of this act shall be enacted or passed in any city or town in the state of Montana.

History: En. Sec. 35, Ch. 171, L. 1917; re-en. Sec. 2711, R. C. M. 1921.

2711.1. Moving of structures—interference with electric wires. No person, firm or corporation moving, hauling or transporting any house, building, derrick or other structure shall cut, move, raise or in any manner interfere with an electric light or electric power wire or poles without giving notice to the owner of said wire or poles, as hereinafter provided.

History: En. Sec. 1, Ch. 55, L. 1929.

2711.2. Notice, when and how given. The person, firm or corporation moving any house, building, derrick or other structure shall give to the person, firm or corporation owning or operating such wire or poles at their nearest office, and also at their principal office within the state, not less

than three days' written notice of the time and place, when and where the removal of said poles or the cutting, raising, moving or otherwise interfering with said poles or wires will be necessary.

History: En. Sec. 2, Ch. 55, L. 1929.

2711.3. Duties of the owner in such case. It shall then be the duty of any person, firm or corporation owning or operating said poles or wires after service of notice, as required by section 2711.2, to furnish competent workmen or linemen to remove such poles, or raise or cut such wires as will be necessary to facilitate removing such house, building, derrick or other structure.

No person, firm or corporation engaged in moving any house, building, derrick or other structure shall raise, cut, or in any way interfere with any such poles or wires, unless the persons or authorities owning or having control of the same shall refuse so to do after having been notified, as required by section 2711.2; then, only competent and experienced workmen or linemen shall be employed in such work, and in such case the necessary and reasonable expense shall be paid by the owners of the poles and wires handled, and the work shall be done in a careful and workmanlike manner, and the said poles and wires shall be promptly replaced and the damages thereto promptly repaired.

History: En. Sec. 3, Ch. 55, L. 1929.

2711.4. Interference with lines. It shall be unlawful for any person, firm or corporation engaged as principal or employer in moving any house, building, derrick or other structure, as provided in the above sections, to move, touch, cut, molest or in any way interfere with any electric light or electric power wires, or any poles bearing any such wires, except in compliance with the provisions of this act.

History: En. Sec. 4, Ch. 55, L. 1929.

CHAPTER 246

INSPECTION OF BOILERS—ENGINEERS' LICENSE

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| Section | 2712. Appointment, term and compensation of boiler inspectors. |
| | 2713. Qualifications of boiler inspectors. |
| | 2714. Inspection of boilers. |
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| | 2718. Duty of owner to permit inspection—sealing of fire-box—costs and expenses. |
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2712. Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint not to exceed four inspectors of boilers and shall prescribe their term of office and fix their compensation.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921.

2713. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam-engines who has not had at least ten years of actual experience in the operation of steam-engines, steam-boilers, and steam machinery, and who has not held for at least five years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889;	References
amd. Sec. 551, Pol. C. 1895; re-en. Sec.	State ex rel. Nagle v. Page, 98 M 14,
1640, Rev. C. 1907; amd. Sec. 2, Ch. 30,	37 P 2d 575.
L. 1913; re-en. Sec. 2713, R. C. M. 1921.	

2714. Inspection of boilers. The inspector of boilers must inspect all steam-boilers and steam-generators before the same are used, and all persons who bring into this state any boiler or boilers must notify the boiler inspector stating the number and kind of boilers, where they had heretofore been located, and where they are to be located and operated in this state, and must secure from the boiler inspector a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety days after they are put in use, and all boilers must be inspected at least once in every year. Any person failing to give notice to the boiler inspector as herein provided, or who operates such boilers without a certificate from the boiler inspector, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, or by imprisonment in the county jail for not less than thirty nor more than ninety days, or by both such fine and imprisonment. The inspector of boilers must subject all boilers to hydrostatic pressure, which hydrostatic pressure must be thirty-three and one-third per cent. greater than the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water is such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

History: Ap. p. Sec. 554, Pol. C. 1895;	References
re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5,	State ex rel. Nagle v. Page, 98 M 14,
Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L.	37 P 2d 575.
1919; re-en. Sec. 2714, R. C. M. 1921.	

2715. Same—further requirements in making inspection. The inspector must also satisfy himself that the safety-valves are of suitable dimension, sufficient in number and area, and properly arranged, and that the safety-valve weights are properly adjusted so as to allow no greater

pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge-cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply of water to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove mud and sediment from all parts of the boilers when they are under pressure of steam, and any renter, user, or owner of a boiler, or any person or persons who tamper with the safety-valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate, shall be deemed guilty of a misdemeanor.

In subjecting the boilers to the hydrostatic test, the test applied must exceed the working pressure allowed in the ratio of one hundred to sixty-six and two-thirds, provided the valves and other conditions of piping on the boiler will allow the inspector to make such test. But where there are leaks on the boiler which make it impossible to apply such hydrostatic pressure, or where the water cannot be procured with which to make such test, the inspector may make a hammer test of said boiler and inspect same closely and give to such boiler a rating for steam pressure as its condition will warrant. In all cases the inspector must use judgment in the steam pressure allowed on boilers. Where a boiler is constructed with lap horizontal seams on boiler, dome, or drum, a factor of four and one-half shall be used in determining the safe working pressure allowed on such boiler. But where the boilers are constructed with butt-strap horizontal seams, a factor of four may be used in determining such safe working pressure. But in any case the inspector may use a higher factor if the conditions are such as to warrant it. If boiler rests on side wall on lugs, or is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used to determine the safe working pressure allowed on boiler. Where the horizontal lap seams of boiler are exposed to the fire, a factor of five must be used to determine the safe working pressure to be allowed on such boiler. On stay bolts, if new, seven thousand five hundred pounds pressure per square inch shall be allowed. If such stay-bolts are corroded or defective, the inspector must determine the pressure to be allowed on same. On braces made of solid material, eight thousand pounds pressure per square inch shall be allowed. On welded braces or braces with only one crow-foot, six thousand pounds pressure per square inch shall be allowed. No cast-iron shall be used in the construction or reinforcements of any boiler where the pressure allowed on said boiler is more than one hundred pounds per square inch.

History: Ap. p. Sec. 555, Pol. C. 1895;
re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6,
Ch. 30, L. 1913; re-en. Sec. 2715, R. C. M.
1921.

References

State ex rel. Nagle v. Page, 98 M 14,
37 P 2d 575.

2716. Same—material to be used. No boiler or steam pipe, nor any of the connections thereto, must be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam-generator which may

not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam-generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R. C. M. 1921.

from this code to conform to later enactments.

References

NOTE.—The latter part of the foregoing section as originally enacted is omitted

State ex rel. Nagle v. Page, 98 M 14, 37 P 2d 575.

2717. Examination may be made at any time. In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause, and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907; re-en. Sec. 2717, R. C. M. 1921.

References

State ex rel. Nagle v. Page, 98 M 14, 37 P 2d 575.

2718. Duty of owner to permit inspection—sealing of fire-box—costs and expenses. It is the duty of the owners or managers of steam-boilers to allow the inspector free access to the same. In case the owner or manager of any boiler is notified by the inspector to have said boiler ready for inspection on a day certain, and fails to have such boiler ready for inspection at such time, the inspector shall at once seal up the firebox in such boiler, and such seal must not be removed from the firedoor without a written order from the inspector. Any person tampering with or removing said seal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next regular visit of the inspector to the district where said boiler is situated, he must pay all transportation and hotel expenses of the inspector who makes the inspection, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R. C. M. 1921.

References

State ex rel. Nagle v. Page, 98 M 14, 37 P 2d 575.

2719. Licenses required—penalty for operating without license. No person must be granted a license to operate steam-boilers or steam machinery under the provisions of this article, who has not been examined by the inspector and found competent to perform the duties of an engineer, and received from such inspector a written or printed license so to act. Any person who operates any steam-boiler or steam-engine without first obtaining a license from the inspector is guilty of a misdemeanor, and upon con-

viction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R. C. M. 1921.

Police Regulation

The trade of engineer is a proper sub-

ject for police regulation. *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059.

References

State ex rel. *Nagle v. Page*, 98 M 14, 37 P 2d 575.

2720. Classification of engineers. Engineers intrusted with the care and management of steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers. No license shall be granted to any person to perform the duties of a first-class engineer who has not taken and subscribed an oath that he has had at least three years' experience in the operation of steam boilers and steam machinery, or whose knowledge and experience is not such as to justify the belief that he is competent to take charge of all classes of steam-boilers and steam machinery. No license must be granted to any person to act as a second-class engineer who has not taken and subscribed an oath that he has had at least two years' experience in the operation of steam-boilers and steam-engines, and is, on examination, found competent to take charge of all classes of steam-boilers and steam machinery not exceeding one hundred horsepower. No license must be granted to any person to act as a third-class engineer who has not served at least one year under a competent engineer, and is found, upon examination, to be sufficiently acquainted with the duties of an engineer to be intrusted with the care of steam-boilers, and of steam machinery not exceeding twenty horsepower. All firemen who have charge of steam-boilers, as to the regulation of feed-water and fuel, where the boilers are so situated as not at all times to be under the eye of the engineer in charge, are required to pass a third-class engineer's examination and procure the same kind of license. All firemen who operate boilers where over thirty pounds pressure per square inch is allowed must hold at least a third-class license. All persons who operate heating boilers or plants, in public buildings where the steam pressure allowed on such boilers is thirty pounds per square inch or less, must procure from an inspector a low-pressure license. Applicants for this grade of license must have at least six months' previous experience in the care and management of low-pressure boilers, and must be found competent, on examination, to hold such grade of license. Such license shall not entitle the holder thereof to operate steam-boilers or steam machinery where the boiler pressure allowed is over thirty pounds to the square inch. Engineers holding third-class or higher class of license may operate boilers in heating plants where thirty pounds pressure or less, per square inch is allowed, without obtaining a low-pressure license. All applicants for license as stationary engineers or firemen must be at least eighteen years of age. None of the licenses in this section above named shall entitle the holder thereof to operate a traction-engine, but all persons who are intrusted with the care and management of traction-engines, or boilers on wheels, are required to

pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. No license shall be granted to any person to act as a traction engineer who has not had at least six months' experience as fireman on traction-engines, and who is not found, upon examination, to be sufficiently acquainted with the duties of a traction engineer to be intrusted with the care of traction engines. Applicants for traction license must be at least eighteen years of age.

History: En. Sec. 3, Ch. 32, L. 1905;	References
re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9,	State ex rel. Nagle v. Page, 98 M 14,
Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L.	37 P 2d 575.
1919; re-en. Sec. 2720, R. C. M. 1921.	

2721. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license from the inspector that he through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition, or that he has been found intoxicated while on duty, it is the duty of the inspector or assistant inspector to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of such engineer.

History: En. Sec. 561, Pol. C. 1895;	References
re-en. Sec. 1650, Rev. C. 1907; amd. Sec.	State ex rel. Nagle v. Page, 98 M 14,
10, Ch. 30, L. 1913; re-en. Sec. 2721, R. C.	37 P 2d 575.
M. 1921.	

2722. Certificate of inspection—penalty for wrongfully issuing certificate of inspection or licenses. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the boiler inspector's office. Any inspector or assistant inspector who wilfully and feloniously certifies regarding any steam boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is punishable under the provisions of section 11198 of the penal code.

History: En. Sec. 562, Pol. C. 1895; re-	References
en. Sec. 1651, Rev. C. 1907; amd. Sec. 11,	State ex rel. Nagle v. Page, 98 M 14,
Ch. 30, L. 1913; re-en. Sec. 2722, R. C. M.	37 P 2d 575.
1921.	

2723. Fees for inspection or examination. The inspector of boilers is authorized to charge a fee of ten dollars for the inspection of each steam-boiler and its steam connections, and five dollars for each additional boiler when connected. The fee for the inspection of each traction-engine or boiler on wheels shall be ten dollars. The fee for the inspection of boilers in incorporated cities shall be five dollars. Such fees shall be payable at the time of the inspection. In case of the failure of the owner, manager, or person in charge of any boiler to pay such fee upon the demand of the inspector, said inspector is authorized to seal the fire-box of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager. Any person who tampers with or removes such seal without such written order shall be deemed guilty of a misdemeanor, and punished as

provided by section 2718. The fee for the examination of applicants for engineer's license is seven dollars and fifty cents for first-class engineer; five dollars for second-class engineer; three dollars for third-class engineer; two dollars for low-pressure engineer, and three dollars for traction engineer, to be paid at the time of application for license. In case of the failure of any applicant to pass a successful examination, ninety days must elapse before he can again be examined as applicant for license. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921.

References

State ex rel. Nagle v. Page, 98 M 14, 37 P 2d 575.

2724. Re-examination for license. If any person who has applied for a license as a first or second or third-class engineer, under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within ninety days after the date of his rejection, by petition in writing set forth the causes of his grievance and demand another examination. Such petition must be addressed to and served upon the inspector, and shall be duly verified by the rejected applicant, and accompanied by the required fee for a second examination. Within two days after receiving such petition and fee, it is the duty of the inspector to notify the applicant in writing that on a day certain, which shall not be less than five nor more than forty days after the date of the service of the petition upon such inspector, he will be ready to grant him another examination. At least two days before the day set for examination the applicant must designate in writing to such inspector the name of an engineer holding a certificate of equal grade with the one applied for, and such engineer may present himself upon the day and at the hour fixed for the re-examination.

History: En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R. C. M. 1921.

References

State ex rel. Nagle v. Page, 98 M 14, 37 P 2d 575.

2725. Board to re-examine applicants. Upon the same day, or any day prior to the date set for such examination, the inspector and selected engineer must in writing agree upon, and designate and notify a third disinterested engineer holding a license equal in grade to the license applied for by the rejected applicant, to sit with them. On the day and hour set for such examination all three of such board, that is, the inspector and the engineer selected by the applicant, and the engineer agreed upon by them, must proceed to carefully re-examine such applicant, and fully and fairly test his qualifications and capabilities to receive a license such as he has applied for. After such examination is completed, if a majority of such board decide that such applicant is entitled to the license he has applied for, or any license of any inferior grade, the inspector must without delay issue a certificate accordingly, but if a majority of such board reject the applicant, it is a final rejection, and he must not be granted another examination for the space of ninety days after such last rejection, when he may

again apply to the inspector or assistant inspector as provided by section 2723 of this code, and no person must be granted more than one re-examination before a board under the provisions of this article. One-half of the fee which may have accompanied any rejected applicant's petition for re-examination must be awarded by the inspector to each of the engineers who sit on any such examining board, and in case the applicant is granted a license, the fee paid when he was first rejected is the fee for the issuing of such license granted by any board. In any case any engineer selected or agreed upon as by this section is provided fails or neglects to appear or serve, another may be selected in his place in the manner herein provided.

History: En. Sec. 565, Pol. C. 1895;	References
re-en. Sec. 1654, Rev. C. 1907; re-en. Sec.	State ex rel. Nagle v. Page, 98 M 14,
2725, R. C. M. 1921.	37 P 2d 575.

2726. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler. Boilers used for heating purposes in private residences, low pressure cast iron sectional boilers carrying not to exceed fifteen pounds steam pressure, and locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article. But locomotives, commonly known as dinkey-engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction-engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. Nor are locomotive engineers, save as herein provided, or persons operating any of the engines or boilers herein, exempted from the operation of this article, required to procure license from the inspectors. It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor. Any person purchasing any steam boiler, whether traction or stationary boiler, shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any steam-boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten days after such purchase, report the fact of such purchase to the boiler inspector and notify such inspector where he intends to locate or operate said boiler. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other steam-boilers and steam-engines, save as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905;	References
re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13,	State ex rel. Nagle v. Page, 98 M 14,
Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L.	37 P 2d 575.
1919; re-en. Sec. 2726, R. C. M. 1921; amd.	
Sec. 1, Ch. 140, L. 1923.	

2727. Certificates must be renewed yearly—disposition of moneys. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is one dollar in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this article must be paid into the state treasury once in each month and credited to the industrial accident board administrative fund as other inspection fees of the industrial accident board are now paid and credited.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921.

2728. Operation of boiler or steam-engine without license. It is unlawful for any person in this state to operate a stationary boiler or steam-engine, or any boiler or steam-engine other than railroad locomotives or other engines and boilers exempted by the provisions of section 2726 of this code, without a license granted under the provisions of this charter. The owner, renter, or user of any steam-engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, refusal to work, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of a steam-engine or boiler operated in remote districts, which would retard the work to be performed, the owner, renter, or user may, for the space of fifteen days, employ any person of the age of eighteen years whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license. The person so employing the unlicensed engineer must immediately notify the inspector or assistant inspector. But no owner, renter, or user of steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R. C. M. 1921.

2729. Sale of second-hand boilers. Any person, firm, or corporation who sells or offers to sell, or who uses or attempts to use, or who rents to others for use, or who delivers to others for use, or who induces others to use any steam-boiler that has theretofore been used, either within or without this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not longer than six months, or by both such fine and imprisonment; provided, that the provisions of this section shall not apply to boilers or engines exempted by the provisions of section 2726 of this code, nor does it apply to boilers which have been

inspected within one year prior to the commission of the act complained of, and on which a certificate of inspection has been issued and has not been revoked, nor does it apply to boilers on which a certificate of inspection has been extended as provided in section 2714 of this code within the time limit of such extension.

History: En. Sec. 7, Ch. 32, L. 1905; re-en. Sec. 1659, Rev. C. 1907; amd. Sec. 16, Ch. 30, L. 1913; re-en. Sec. 2729, R. C. M. 1921.

References

Cited or applied as section 1659, revised codes, before amendment, in *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059.

CHAPTER 247

REGULATION OF HOISTING ENGINES

- Section 2730. Operators of hoisting engines must procure license.
 2731. Application and fee for license—life, renewal, and revocation of license.
 2732. Scope of license—who need not obtain.
 2733. First and second-class licenses—qualifications of applicant.
 2734. Machinery which licensee deemed qualified to operate.
 2735. Renewal of application by rejected candidate.
 2736. Penalty for operating machinery without license.

2730. Operators of hoisting engines must procure license. It shall be unlawful for any person to operate an electric hoisting engine, or any air hoisting engine, or any hoisting engine operated by gas, oil, or any product of oil, of over five horsepower when used in lowering or hoisting men, except in operating elevators in buildings, or any air compressor operated by any power, without first obtaining a license therefor from a boiler inspector as herein provided. Except that in emergencies the provisions of section 2728 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R. C. M. 1921.

References

State ex rel. Nagle v. Page, 98 M 14, 37 P 2d 575.

2731. Application and fee for license—life, renewal, and revocation of license. Application for such licenses shall be made to the state boiler inspector in the manner, and the same fee shall be charged therefor and for such license, as now required by law for obtaining a license to operate steam-engines and steam-boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam-engines or steam-boilers; provided, that the state boiler inspector shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which he could revoke a license to operate steam-engines and steam-boilers.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R. C. M. 1921.

2732. Scope of license—who need not obtain. A license granted under the provisions of this act shall entitle the holder thereof to operate any of the machinery named in section 2730 of this code, and the license shall specify on its face such machinery, but no license issued hereunder shall authorize or qualify the person to whom issued to operate a steam-boiler or steam-engine. Any person holding a license as a first-class engineer,

authorizing him to operate steam-boilers and steam-engines, shall be deemed qualified to operate any of the engines and machinery named in said section 2730 without obtaining any license under the provisions thereof. Any person holding a license as a second-class engineer, authorizing him to operate steam-boilers and steam-engines, shall be deemed qualified to operate any of the engines and machinery mentioned in said section 2730, where the same are not over one hundred horsepower capacity, without obtaining any license under the provisions thereof.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R. C. M. 1921.

2733. First and second-class licenses—qualifications of applicant.

Licenses issued under this act shall be divided into two classes, namely, first class and second class. No person must be granted a first-class license who has not taken and subscribed an oath that he has had at least three years' experience in the operation of at least one of the engines named in section 2730 of this code, and whose knowledge of the construction and operation is such as to justify the belief that he is competent to take charge of and operate such machinery. No person must be granted a second-class license who has not taken and subscribed an oath that he has had at least two years' experience in the operation of at least one of the engines named in section 2730 of this code, and whose knowledge of the construction and operation is such as to justify the belief that he is competent to take charge of and operate such machinery.

History: En. Sec. 4, Ch. 104, L. 1915; re-en. Sec. 2733, R. C. M. 1921.

2734. Machinery which licensee deemed qualified to operate. Any person to whom is granted a first-class license under the provisions of this act shall be deemed qualified to operate any of the machinery or engines named in section 2730 of this code, without regard to the horsepower thereof. Any person to whom is granted a second-class license under the provisions of this act shall not be permitted to operate any of the machinery named in said section 2730 of a greater capacity than one hundred horsepower.

History: En. Sec. 5, Ch. 104, L. 1915; re-en. Sec. 2734, R. C. M. 1921.

2735. Renewal of application by rejected candidate. Any person who has regularly applied for a license under the provisions of this act and has been rejected, may renew his application for such license within the time and in the manner prescribed in sections 2724 and 2725 of this code.

History: En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R. C. M. 1921.

2736. Penalty for operating machinery without license. Every person who operates any of the engines and machinery named in section 2730 of this code for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer, or manager of any such engines or machinery who knowingly permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R. C. M. 1921.

CHAPTER 248

UNIFORM AERONAUTICS ACT

Section 2736.1.	"Aircraft" and "airman" defined.
2736.2.	Federal rules and regulations to be followed.
2736.3.	Qualifications of operators—federal license.
2736.4.	Possession and display of license.
2736.5.	Sovereignty in space.
2736.6.	Ownership of space.
2736.7.	Lawfulness of flight—landings.
2736.8.	Penalties.
2736.9.	Interpretation.
2736.10.	Short title.

2736.1. "Aircraft" and "airman" defined. Aircraft means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

The term "airman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repairing of aircraft.

History: En. Sec. 1, Ch. 17, L. 1929.

NOTE.—Uniform state law.

Sections 2736.1, 2736.5, 2736.6, 2736.7, 2736.9 and 2736.10 are similar to sections 1, 2, 3, 4, 11, and 12, respectively, of the "Uniform Aeronautics Act" approved by the National Conference of Commissioners on

Uniform State Laws in 1922 and adopted in the states of Arizona, Delaware, Idaho, Indiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont and Wisconsin and also in the Territory of Hawaii.

2736.2. Federal rules and regulations to be followed. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction and airworthiness to the standards now, or hereafter to be prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force.

History: En. Sec. 2, Ch. 17, L. 1929.

2736.3. Qualifications of operators—federal license. The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating the aircraft described in section 2736.2 hereof in any form of navigation for which license to operate such aircraft would be required by the United States government shall have the qualifications necessary for obtaining and holding the class of license required by the United States government. It shall be unlawful for any person to engage in operating such aircraft within this state in any form of navigation unless he have such a license.

History: En. Sec. 3, Ch. 17, L. 1929.

2736.4. Possession and display of license. The certificate of the license herein required shall be kept in the personal possession of the licensee when

he is operating aircraft within this state, and must be presented for inspection upon the demand of any passenger, any official of the United States department of commerce, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he shall land.

History: En. Sec. 4, Ch. 17, L. 1929.

2736.5. Sovereignty in space. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by the United States law.

History: En. Sec. 5, Ch. 17, L. 1929.

2736.6. Ownership of space. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section 2736.7.

History: En. Sec. 6, Ch. 17, L. 1929.

2736.7. Lawfulness of flight—landings. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the airman shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929.

2736.8. Penalties. A person who violates any provision of this act shall be guilty of a misdemeanor and punishable by a fine of not more than \$500.00 or by imprisonment for not more than six months, or both.

History: En. Sec. 8, Ch. 17, L. 1929.

2736.9. Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

History: En. Sec. 9, Ch. 17, L. 1929.

2736.10. Short title. This act may be cited as the Uniform State Law for Aeronautics.

History: En. Sec. 10, Ch. 17, L. 1929.

CHAPTER 249

FIRE PROTECTION—STATE FIRE MARSHAL

Section 2737.	Creation of office of state fire marshal.
2737.1.	Powers of state fire marshal.
2737.2.	Violation of provisions.
2738.	Appointment and term of office.
2739.	Salary.

- 2740. Assistant state fire marshal—appointment and salary.
- 2741. Marshal not to engage in other business.
- 2742. Special deputy fire marshal.
- 2743. Investigation of fires.
- 2744. Duty in carrying on investigations.
- 2745. Penalty for violation of law.
- 2746. Further investigation by marshal.
- 2747. Arrests by marshal.
- 2748. Attendance of witnesses and production of evidence.
- 2749. Duties of marshal and deputies in case of violation of law—false swearing or contemptuous conduct of witnesses.
- 2750. Investigation may be private.
- 2751. Examination of premises where fire occurred.
- 2752. Entering of buildings for purpose of examination
- 2753. Removal of dilapidated buildings—proceedings.
- 2753.1. Answer of owner or occupant—affirmation of order—judgment.
- 2753.2. Hearing and judgment.
- 2753.3. Proceedings on failure to comply with order.
- 2753.4. Removal of combustible material.
- 2754. Appeal to state fire marshal.
- 2755. Failure of owner of buildings to comply with order.
- 2756. Records of fire marshal.
- 2757. Compensation of officers.
- 2758. Itemized statement of marshal's expenses.
- 2759. Annual reports to commissioner of insurance.
- 2760. Oath and bond of marshal and deputy.
- 2761. Tax levy—expenditure of funds.
- 2762. Powers of commissioner of insurance.
- 2762.1. Standardization of fire protective equipment.
- 2762.2. State fire marshal to direct standardization.
- 2762.3. Notice of necessary changes—converting equipment.

2737. Creation of office of state fire marshal. There is hereby created and established the office of state fire marshal, which shall be a department of and under the supervision and control of the state auditor and commissioner of insurance ex-officio.

History: En. Sec. 1, Ch. 148, L. 1911;
re-en. Sec. 2737, R. C. M. 1921.

Constitutionality

Held, that chapter 209, part III of the political code (secs. 2737-2762) creating the office of state fire marshal and prescribing his duties and powers, is not violative of section 36, article V of the con-

stitution, as delegating municipal functions to the marshal. State ex rel. Brooks v. Cook, 84 M 478, 276 P 958.

Id. Measures for the protection of life and property against fire hazards fall within the police power of the state, which power may either be exercised by the state through proper machinery or delegated for local administration to cities or towns.

2737.1. Powers of the state fire marshal. In addition to the powers heretofore granted, the state fire marshal shall have powers as per sections following:

1. The inspection and regulation of moving picture shows and theaters.
2. Overseeing the safety of and directing the means and adequacy of exit in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, amphitheaters, hotels and rooming houses, and all other places where large numbers of persons work, sleep, live or congregate from time to time for any purpose.
3. That the state fire marshal shall make at least one inspection during every year, of each state institution, and submit a copy of the report to the board of examiners with recommendations in regard to fire protection.
4. The inspection of safety requirements for the construction, installation, equipment, maintenance, and operation of freight and passenger ele-

vators operated for the use of the public in office buildings, stores, hotels, rooming houses, apartments, or in any building frequented by the public.

5. The state fire marshal and the commissioner of insurance is hereby given power to do all things necessary and convenient for carrying into effect the laws of this state governing section 2737.1 and may, from time to time, promulgate necessary rules and regulations for the better protection of the lives and property of the public.

History: En. Sec. 1, Ch. 124, L. 1929.

2737.2. Violation of provisions. Every person, firm or corporation, violating any of the provisions of section 2737.1 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 124, L. 1929.

2738. Appointment and term of office. The state auditor and commissioner of insurance ex-officio is hereby authorized and empowered to appoint, immediately after the approval of this act, a suitable person, a citizen of this state, who shall be designated as state fire marshal, and whose term of office shall be for four years; except, that the first officer appointed under this act shall hold office until January 1, 1913, or until his successor is appointed and qualified; provided, that such officer is subject at all times to removal by the appointing power.

History: En. Sec. 2, Ch. 148, L. 1911;
re-en. Sec. 2738, R. C. M. 1921.

References
State ex rel. Brooks v. Cook, 84 M 478,
279 P 958.

2739. Salary. The salary of the state fire marshal shall be twenty-four hundred dollars per annum, payable monthly from the state fire marshal fund.

History: En. Sec. 3, Ch. 148, L. 1911; amd. Sec. 1, Ch. 122, L. 1919; Sec. 1, Ch. 131, L. 1919; re-en. Sec. 2739, R. C. M. 1921.

2740. Assistant state fire marshal—appointment and salary. The state auditor is hereby authorized and empowered to appoint an assistant state fire marshal, at a salary of twenty-one hundred dollars per year, payable monthly.

History: En. Sec. 1, Ch. 126, L. 1919; re-en. Sec. 2740, R. C. M. 1921.

2741. Marshal not to engage in other business. The state fire marshal shall not engage in any other business. He shall at all times be in the office of the state fire marshal, ready for the performance of the duties required of him by law.

History: En. Sec. 4, Ch. 148, L. 1911; re-en. Sec. 2741, R. C. M. 1921.

2742. Special deputy fire marshal. In an emergency, or during the absence or disability of the state fire marshal, the state auditor and commissioner of insurance may appoint a special deputy fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to be temporary and to cease when the necessity therefor has been relieved. Said special deputy shall be allowed and paid at the rate of five dollars per day for each day's service performed in the interest of the state under said appointment, during the period for which said appointment was authorized. His claim for per diem for such service,

and for necessary traveling expenses incurred in the performance of said duties, properly attested and sworn to, shall be filed with the commissioner of insurance or state fire marshal, who shall certify to the correctness of the same, and refer said claim, so certified, to the state board of examiners, and upon their approval, as required by law, said claim shall be paid in the usual manner; provided, that the warrant issued in payment of said claim shall be charged against the amount appropriated for the expenses of the state fire marshal's office; and provided, further, that the state auditor and commissioner of insurance may also appoint special deputy fire marshals without remuneration.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R. C. M. 1921.

2743. Investigation of fires. The state fire marshal, the chief of the fire department of each city or village in which a fire department is established, the mayor of each incorporated village in which no fire department exists, and the justice of the peace of each organized township without the limits of a village or city, shall investigate the cause, origin, and circumstances of each fire occurring in such city, village, or township, by which such property has been destroyed or damaged, and shall make an investigation to determine whether the fire was the result of carelessness or design. The investigation shall be commenced within two days, not including Sunday, if the fire occurred on that day, and the state fire marshal may superintend and direct the investigation if he deems it necessary.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R. C. M. 1921.

2744. Duty in carrying on investigations. The officer making an investigation of a fire occurring in a city, village, or township, shall forthwith notify the state fire marshal, and within one week of the occurrence of the fire shall furnish him a written statement of all facts relating to its cause and origin, and such other information as is required by forms provided by the state fire marshal.

History: En. Sec. 7, Ch. 148, L. 1911; re-en. Sec. 2744, R. C. M. 1921.

2745. Penalty for violation of law. An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter, shall be fined not less than twenty-five dollars nor more than two hundred dollars.

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R. C. M. 1921.

2746. Further investigation by marshal. If, in his opinion, further investigation is necessary, the state fire marshal or a deputy state fire marshal shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have means of knowledge in relation to the matter concerning which an examination is required by law to be made, and cause such testimony to be reduced to writing.

History: En. Sec. 9, Ch. 148, L. 1911; re-en. Sec. 2746, R. C. M. 1921.

2747. Arrests by marshal. If the state fire marshal or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such

evidence, with the names of witnesses, and a copy of material testimony taken in the case.

History: En. Sec. 10, Ch. 148, L. 1911; re-en. Sec. 2747, R. C. M. 1921.

2748. Attendance of witnesses and production of evidence. The state fire marshal or a deputy state fire marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation, and require the production of any book, paper, or document he deems pertinent.

History: En. Sec. 11, Ch. 148, L. 1911; re-en. Sec. 2748, R. C. M. 1921.

2749. Duties of marshal and deputies in case of violation of law—false swearing or contemptuous conduct of witnesses. If the state fire marshal or a deputy fire marshal shall be notified by any officer or other persons, or shall have knowledge of any violation of any of the provisions of this act, or of the laws of this state relating to fires, it shall be his duty forthwith diligently to inquire into the facts of such violation, and for that purpose he is hereby authorized to cause subpoenas to be issued for such persons as he shall have reason to believe have any information concerning, or knowledge of such violation, to appear before a justice of the peace at the time and place to be designated in the subpoena, then and there to testify concerning any violation of any of the provisions of such laws; and for that purpose the said state fire marshal or deputy fire marshal may file with some justice of the peace a written statement signed by said state fire marshal or deputy state fire marshal, alleging any violation of the laws of this state relating to fires, or any of the provisions of this act, and said justice of the peace shall then, upon the written praecipe of the state fire marshal or deputy state fire marshal, issue subpoena for the witness named in said praecipe, commanding such witness to be and appear before such justice of the peace at the time designated in such subpoena, to testify concerning any violation of the provisions of said laws. Such subpoenas may be served by the sheriff or any constable of the county, or by any other person who is a citizen of the county, and shall be served and returned to such state fire marshal or a deputy state fire marshal, or a justice of the peace, in the same manner that subpoenas are served and returned when issued by justices of the peace. Each witness shall be sworn to make true answers to all questions propounded to him touching the matters under investigation, and the testimony of each witness shall be reduced to writing and signed by the witness. For the purpose of this act, the state fire marshal or a deputy state fire marshal shall have authority to administer an oath to any person appearing as a witness as above provided. False swearing in such a matter or proceeding shall be perjury and punished as such. Any disobedience to such subpoena or any refusal to be sworn as a witness, or to sign the testimony given by such witness, or any refusal to answer any proper question propounded to him, shall be a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Justices of the peace, when acting under the provisions of this act, shall have power to adjourn such proceedings from time to time, and to punish

any witness for contempt for, or on account of his refusal to be sworn or to answer questions as a witness, or to sign his testimony; and the attendance of witnesses may be by such justice of the peace compelled by attachment. If the testimony so taken shall disclose the fact that an offense has been committed, the county attorney of the county in which said offense was committed shall prosecute the person or persons committing such offense in the same manner as in other criminal cases.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R. C. M. 1921.

2750. Investigation may be private. Investigation by or under the direction of the state fire marshal may, in his discretion, be private. He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

History: En. Sec. 13, Ch. 148, L. 1911; re-en. Sec. 2750, R. C. M. 1921.

2751. Examination of premises where fire occurred. In the performance of the duties imposed by the provisions of this chapter the state fire marshal and each of his subordinates, at all times of day or night may enter upon and examine any building or premises where a fire has occurred, and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R. C. M. 1921.

2752. Entering of buildings for purpose of examination. The state fire marshal, his deputies and subordinates, the chief of the fire department of each city or village where a fire department is established, or the mayor of a city or village where no fire department exists, or the justice of the peace of a township in territory without the limits of a city or village, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of examination.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R. C. M. 1921.

2753. Removal of dilapidated buildings—proceedings. Any building or other structure which for want of proper repair, by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason is especially liable to fire, and which building or other structure is so situated as to endanger other buildings and property in the vicinity, is hereby declared to be a public nuisance. If the state fire marshal, a deputy state fire marshal or any officer mentioned in the preceding section, upon an examination or inspection, finds that a building or other structure, which for want of proper repair, by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason, is especially liable to fire, and which building or other structure is so situated as to endanger other buildings or property in the vicinity, such officer should order such structure to be repaired, torn down or demolished, all materials removed and all dangerous conditions remedied.

Such order shall be in writing, shall recite the grounds therefor and shall be filed in the office of the clerk of the district court of the county in which the building or structure, so ordered to be altered, repaired or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in said court. A copy of the order filed as aforesaid together with a written notice that the same has been so filed and will be put in force unless the owner, occupant or tenant shall file with the clerk of the said court his objections or answer thereto within the time specified in the next succeeding section, shall be served upon the owner of the building or structure so directed to be altered, repaired or demolished; and if there be a tenant occupying the building service shall also be made upon such occupant. Such service shall be made upon such owner and occupant, if there be one, personally either within or without the state; but if the whereabouts of such owner is unknown and the same cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of said notice upon such owner may be made by the clerk of the district court by publication of the same once in each week for three successive weeks in a newspaper printed and published in the county in which such building or structure is located and by posting a copy thereof in a conspicuous place upon said building or structure, and the service so made shall be deemed to be complete upon the expiration of the said publication period. Proof of service of said notice shall be filed in the office of the clerk of the district court within five days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1929.

Notice

The rule that notice to one to appear and answer in a proceeding taken against him must be reasonable as to time to constitute due process of law, means notice suitable to the particular case; and under that rule, held, that the notice of not less than five nor more than ten days required

to be given to defendant in a proceeding for the condemnation of a fire hazard under this chapter where he resides in or near the city in which the objectionable structure is situated, is reasonable, that it is clear that it was the legislative intent that in every case of that nature at least reasonable notice shall be given and that "the intention of the lawmaker constitutes the law." (Construed before amendment Ch. 139, L. 1929). State ex rel. Brooks v. Cook, 84 M 478, 276 P 958.

2753.1. Answer of owner or occupant—affirmation of order—judgment. The owner of any building so condemned, or any occupant or lessee upon whom such notice or order shall be served, within twenty days from the date of such service, as herein provided, may file with the clerk of the district court and serve upon the said state fire marshal, a deputy state fire marshal or any officer mentioned in section 2752, written objections to said order in the form of a verified answer, denying the existence of any of the facts therein cited which he desires to controvert. If no answer is so filed and served the owner and all other persons in interest shall be deemed to be in default and thereupon the court shall affirm the order of condemnation and direct the state fire marshal to proceed with the enforcement thereof; but if an answer be filed and served as herein provided the

court shall hear and determine the issues so raised and give judgment thereon as herein provided.

History: En. Sec. 2753-A, Ch. 139, L. 1929.

References

State ex rel. Brooks v. Cook, 84 M 478, 279 P 958.

2753.2. Hearing and judgment. The court, upon application of the state fire marshal, deputy state fire marshal or any office mentioned in section 2752, shall make its order fixing a time and place for such hearing, which time shall be within twenty days from the date of the filing of the answer or as soon thereafter as the matter may be heard. If, upon such trial the order shall be sustained judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed or repaired, as the case may be, in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929.

References

State ex rel. Brooks v. Cook, 84 M 478, 279 P 958.

2753.3. Proceedings on failure to comply with order. If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure, as herein provided, within the time fixed by the court, in case a trial is had therein, then the state fire marshal shall proceed to cause such building or structure to be altered, repaired or demolished in accordance with the directions contained in such order; and where a building or structure is demolished in accordance with such order he may sell or dispose of the salvaged materials therefrom at public auction upon five days posted notice. He shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him and the amount, if any, received from such salvage sale, to the court for approval and allowance; and thereupon the court shall examine, correct if necessary and allow said expense account; and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated, and if the amount thereof is not paid by the owner or other party in interest within six months after the account has been examined and approved by the court as aforesaid the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution and the proceeds of said sale shall be paid into the state treasury and credited to the fund of the state fire marshal. If the amount received as salvage or on sale shall exceed the expense incurred by the state fire marshal the court shall direct the payment of the surplus to the owner or the payment of the same into court for his use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929.

2753.4. Removal of combustible materials. If the state fire marshal, deputy state fire marshal or any officer mentioned in section 2752, finds in a building or upon any premises any combustible or explosive material, any

rubbish, rags, waste, oils, gasoline or inflammable conditions of any kind dangerous, to the safety of such building or premises, buildings or property, such officer should order such materials removed or dangerous conditions remedied. Such order should be in writing and directed generally to the owner, lessee, agent or occupant of such building or premises, and any such owner, lessee, agent or occupant upon whom such notice shall be served, who shall fail to comply therewith within twenty-four hours thereafter, unless the order prescribes a longer time within which it may be complied with, shall be guilty of a misdemeanor and said material may be removed or dangerous condition corrected at the expense of the owner of such building or premises or at the expense of the person upon whom such service is so made, or both and said state fire marshal, deputy state fire marshal or other office mentioned in section 2752 may maintain all necessary actions for the recovery thereof.

History: En. Sec. 2753-D, Ch. 139, L. 1929.

2754. Appeal to state fire marshal. If the owner or occupant deems himself aggrieved by an order of an officer under the preceding section, he may appeal to the state fire marshal within twenty-four hours, and the cause of the complaint shall at once be investigated by direction of the state fire marshal. Unless such order is revoked by the state fire marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R. C. M. 1921.

2755. Failure of owner of buildings to comply with order. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in the three preceding sections shall be fined not less than ten dollars nor more than fifty dollars for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911; re-en. Sec. 2755, R. C. M. 1921.

2756. Records of fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, the origin of such fires, and all facts, statistics, and circumstances relating thereto, which have been determined by investigations under the provisions of this chapter. Except the testimony given upon an investigation, such record shall be open at all times to public inspection.

History: En. Sec. 19, Ch. 148, L. 1911; re-en. Sec. 2756, R. C. M. 1921.

2757. Compensation of officers. Chiefs of fire departments and mayors of incorporated villages who do not receive compensation for their services, and justices of the peace of organized townships, who are required by the provisions of this chapter to report fires to the state fire marshal, shall receive fifty cents for each fire reported to his satisfaction, and fifteen cents per mile for each mile traveled to the place of the fire. At the close of each appropriation year such allowance shall be paid in the same manner as other claims arising in the state fire marshal's department, and as heretofore provided for in this act.

History: En. Sec. 20, Ch. 148, L. 1911; re-en. Sec. 2757, R. C. M. 1921.

2758. Itemized statement of marshal's expenses. The state fire marshal shall keep on file in his office an itemized statement of all expenses

incurred by the department. He shall approve all vouchers issued therefor before they are submitted to the state board of examiners for payment, and thereupon such vouchers shall be allowed and paid as other claims against the state.

History: En. Sec. 21, Ch. 148, L. 1911; re-en. Sec. 2758, R. C. M. 1921.

2759. Annual reports to commissioner of insurance. The state fire marshal shall make an annual report to the commissioner of insurance, containing a detailed statement of his official action and the transactions of his department. The commissioner of insurance shall, in turn, submit said report to the governor of the state, with such recommendations and comments thereon as he may deem necessary.

History: En. Sec. 22, Ch. 148, L. 1911; re-en. Sec. 2759, R. C. M. 1921.

2760. Oath and bond of marshal and deputy. The state fire marshal shall be required to give a surety bond, furnished by a company authorized to transact surety business in this state, in the sum of five thousand dollars, for the faithful performance of his duties, and shall subscribe and file therewith the oath of office required of all public officers; and, provided, further, that any special deputy fire marshal appointed under the provisions of this act shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R. C. M. 1921.

2761. Tax levy—expenditure of funds. For the purpose of maintaining the department of the state fire marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the state auditor and commissioner of insurance ex-officio, during the month of February or March in each year, in addition to the license fees required by law to be paid by it, provided in section 6112 of these codes, a tax of one-fourth of one per cent. on the gross premium receipts of such companies, less cancellations and return premiums, on all business transacted by it in the state of Montana during the calendar year next preceding, as shown by its annual statement under oath to the insurance department. The state auditor and commissioner of insurance ex-officio shall pay the money so received into the state treasury to the credit of a special fund for the maintenance of the office of the state fire marshal, to be known as the "state fire marshal fund." If any portion of such special fund remains unexpended at the end of the year for which it was required to be paid, and the state fire marshal so certifies, it shall be transferred to the general fund of the state; provided, that such salaries, compensation of special deputies or clerks, and all other expenses of the department of the state fire marshal, necessary in the performance of the duties imposed on him by law, shall not exceed in any year the amount paid into the state treasury for that year by fire insurance companies, as provided herein.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921.

2762. Powers of commissioner of insurance. The powers and authority granted by this act to the state fire marshal are also vested in the commissioner of insurance.

History: En. Sec. 25, Ch. 148, L. 1911; re-en. Sec. 2762, R. C. M. 1921.

2762.1. Standardization of fire protective equipment. That hereafter all equipment for fire protection purposes purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard thread for fire hose couplings and hydrant fittings designated as the national standard, as adopted by the national board of fire underwriters, which standard is hereby designated as the standard for such equipment in the state of Montana.

History: En. Sec. 1, Ch. 53, L. 1929.

2762.2. State fire marshal to direct standardization. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal of Montana. The state fire marshal is authorized to proceed to make such changes as may be necessary to standardize all existing fire protection equipment in this state immediately after this act becomes effective. He shall provide such appliances as are necessary for carrying on this work and shall proceed with such standardization as rapidly as possible and complete such work at the earliest date circumstances will permit.

History: En. Sec. 2, Ch. 53, L. 1929.

2762.3. Notice of necessary changes—converting equipment. The state fire marshal shall notify industrial establishments and property owners having equipment for fire protection purposes, which it may be necessary for a fire department to use in protecting the property or putting out fire, of the changes necessary to bring their equipment up to the requirements of the standard hereby established and shall render them such assistance as may be available in converting their equipment to standard requirements.

History: En. Sec. 3, Ch. 53, L. 1929.

CHAPTER 250

FOREST FIRE PROTECTION—FIRE WARDENS

Section 2763.	Definition of terms.
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2766.	Penalty for setting or leaving fire causing damage.
2767.	Arrest without warrant of persons violating act.
2768.	Duty of county attorney to prosecute offenders—failure of county attorney or magistrate to comply with duty.
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2776.	State fire warden.
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2778.7.	Slashings lien.

2763. Definition of terms. In this act, unless the context or subject-matter otherwise requires, the word "forester" shall mean the state forester, or any of his subordinate officers; "warden" shall be held to mean "fire warden"; "ranger" to mean "forest ranger," or any duly appointed forest officer of the United States forest service; "rangers"

shall be held to mean "forest rangers"; "person" shall be held to include "firm or corporation"; and "forest material" shall be held to mean "forest, slashing, stump land, chopping, woodland, or brush land"; "camp-fire" shall be held to mean "any fire set for any purpose other than the disposal of forest material."

History: En. Sec. 1, Ch. 170, L. 1919; re-en. Sec. 2763, R. C. M. 1921.

2764. Ex-officio fire wardens—designation and compensation. All duly appointed officers of the United States forest service, the northern Montana forestry association, and the United States Indian service, are hereby made ex-officio fire wardens, and shall have authority to enforce and carry out the provisions of this act. Said officers are to serve without compensation from the state.

History: En. Sec. 2, Ch. 170, L. 1919; re-en. Sec. 2764, R. C. M. 1921.

2765. Repealed—Chapter 95, laws of 1927.

2766. Penalty for setting or leaving fire causing damage. Any person who shall, upon any land within this state, set or leave any fire that shall spread and damage or destroy property of any kind not his own, shall, upon conviction, be punished by a fine of not less than ten dollars nor more than five hundred dollars. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony, and shall be punished by imprisonment in the state penitentiary for not less than one nor more than fifty years.

During the closed season, any person who shall kindle a camp-fire on land not his own, in or dangerously near any forest material, and leave same unquenched, or who shall be a party thereto, or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms, or in any other manner start a fire in forest material not his own, and leave same unquenched, shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding sixty days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R. C. M. 1921.

2767. Arrest without warrant of persons violating act. The forester, his assistants, wardens, rangers, and all police officers are hereby empowered to make arrests without warrant of persons violating this act.

History: En. Sec. 5, Ch. 170, L. 1919; re-en. Sec. 2767, R. C. M. 1921.

2768. Duty of county attorney to prosecute offenders—failure of county attorney or magistrate to comply with duty. Whenever an arrest shall have been made for a violation of any of the provisions of this act, or whenever information of such violation shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed shall prosecute the offender or offenders with all diligence and energy. If any county attorney shall fail to comply with the provisions of this act, he shall be guilty of a misdemeanor, and, upon his conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars; and upon his conviction the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper

appointing power thereof. Action against the county attorney shall be brought by the attorney general in the name of the state of Montana. The penalties of this section shall also apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons, when a complaint under oath of a violation of any of the provisions of this act has been lodged with him.

History: En. Sec. 6, Ch. 170, L. 1919; re-en. Sec. 2768, R. C. M. 1921.

2769. Liability of offenders for damages and costs. Any person who shall, upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own, shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall, upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property, shall be liable for all costs and expenses incurred by the state of Montana, or by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R. C. M. 1921.

2770. Disposition of fines. All fines collected under this act shall be paid to the county treasury of the county in which the offense was committed for the benefit of the common school fund of such county.

History: En. Sec. 8, Ch. 170, L. 1919; re-en. Sec. 2770, R. C. M. 1921.

2771-2773. Repealed—Chapter 95, laws of 1927.

2774. Repealed—Chapter 163, laws of 1935.

2775. Duties of state forester and fire wardens. Other duties of the state forester and fire wardens appointed by him, relating to the control and prevention of fire are prescribed by sections 1830.1-1839.6 of this code.

History: New section recommended by code commissioner, 1921.

2776. State fire warden. There is hereby created the office of state fire warden, and the state game and fish warden is hereby made ex-officio state fire warden to serve as such state fire warden without additional salary.

History: En. Sec. 1, Ch. 147, L. 1907; Sec. 2071, Rev. C. 1907; re-en. Sec. 2776, R. C. M. 1921.

2777. Deputy fire wardens. All of the deputy state game and fish wardens shall be deputy fire wardens to serve without extra salary, and said state fire warden and said deputies shall, under such rules and regulations as the state board of land commissioners shall provide, protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose in emergencies may employ men and incur other expenses when necessary, and such fire warden and deputies shall have power and authority to make arrests of any person or persons who may violate any of the laws of this state relating to prairie or forest fires.

History: En. Sec. 2, Ch. 147, L. 1907; Sec. 2072, Rev. C. 1907; re-en. Sec. 2777, R. C. M. 1921.

2778. Expenses and expenditures—how paid. The actual expenses and expenditures of said fire warden and deputies necessarily incurred under this act shall be paid in the same manner as other expenses incurred in

managing the state lands and the state auditor is hereby authorized to draw his warrants for such expenses and expenditures and the state treasurer is hereby directed to pay the same.

History: En. Sec. 3, Ch. 147, L. 1907; Sec. 2073, Rev. C. 1907; re-en. Sec. 2778, R. C. M. 1921.

2778.1. Listing of state forest lands with forest protective agencies.

The state board of land commissioners may, in its discretion, list any of the state's forest lands with any qualified agency engaged in patrolling, preventing, and suppressing forest fires. The state shall bear and pay its proper share of the cost of protection from fire of the lands so listed. Such moneys as the state shall become liable for under the provisions of this section shall be paid from any funds provided by law for the protection of state forests and forest lands.

History: En. Sec. 1, Ch. 95, L. 1927.

2778.2. Liability for extinguishment of forest fires. Any uncontrolled or spreading fire in forest material in the state of Montana, from May 1 to September 30, inclusive, is hereby declared a public nuisance. The person, firm, or corporation on whose property such fire exists or from whose property such fire spreads, is hereby made responsible, to the extent hereinafter set forth for its control and extinguishment. If the person, firm or corporation thus responsible, shall refuse, or neglect, or fail to take reasonable steps to control or extinguish it, the state forester, the United States or any organized and functioning forest protective association recognized by the state forester, may summarily abate such nuisance by controlling or extinguishing the fire, and the cost thereof may be recovered from such person, firm or corporation responsible for such fire by the state of Montana, or the United States, or the association, which extinguished or controlled it. If the person, firm or corporation shall fail to pay in full the total amount due within thirty (30) days after date of written demand for payment, such amount may be collected in an action for debt by the state, the United States, or the association which abated the nuisance.

Provided, that when any person, firm or corporation has listed his lands with any such regularly organized and functioning forest protective association recognized by the state forester, or with the state forester or the United States forest service, it shall be considered that he has taken reasonable steps to control and extinguish fires as described in this section except such fires as may be the result of his negligent acts, conduct or operations.

History: En. Sec. 2, Ch. 95, L. 1927.

2778.3. Definitions. For the purpose of this act, "forest land" shall mean any land which has thereon slashings, brush, inflammable forest growth of any kind, or size, living or dead, or standing or down, including debris, or forest cover of any kinds.

"Forest material" shall be held to mean trees, poles, logs, pilings, slabs, ties, stumps, cordwood, bark sticks, slashings, wood, brush, cuttings, refuse, weeds, grass, twigs, leaves, and litter within or adjacent to standing timber, cut-over land, or burned-over forest land, and every kind of forest products lying or piled upon the land.

History: En. Sec. 3, Ch. 95, L. 1927.

2778.4. Permit to burn forest material—penalty for violations concerning. To insure the protection of lives and property, no person shall burn any forest material of the kind defined by this act within the state of Montana during the period from May 1 to September 30, inclusive, of each year, which period is hereby designated as the closed season, without first obtaining written permission to burn, from the state forester or his authorized representative, a fire warden, or a ranger. Said permit shall fix the time for setting out fires and the particular period within which a fire may be set out and allowed to continue burning, and no fire shall be set without reasonable precaution having been taken and without having equipment and tools present at time of setting the fire to control the same, and the said fire shall be watched by the person setting the fire until it is out. Anyone violating any provisions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days, or by both such fine and imprisonment.

The state forester, any of his assistants, any fire warden or ranger, may during the closed season, refuse to grant permits, or may revoke any permit, or may require any permittee to postpone the burning authorized by permit when in his judgment such action is necessary.

In times and localities of unusual forest fire hazard, the governor, upon the advice of the state forester, may suspend any or all permits authorized by this section.

History: En. Sec. 4, Ch. 95, L. 1927.

2778.5. Piling and burning of brush and forest debris. Everyone clearing right of way for any railroad, public highway, public trail, private highway, private road, trail, ditch, dike, pipe line or wire line, or any other transmission or transportation utility right of way, except temporary roads, chutes or trails used in actual logging operations, shall pile and burn all refuse timber, brush, slash or debris cut for such clearing or resulting from the cutting of material for the construction of said public or private utility unless exempted by the state forester.

The piling shall be done as rapidly as cutting or clearing progresses, and burning shall be completed within one (1) year from time of cutting. If burning be done during the closed season it must be done in compliance with all the provisions of this act relative to burning permits during the closed season.

The provisions of this section shall apply to all clearing of rights of way on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and less unavoidable emergency prevents, provisions shall be made by the proper officials conducting, directing, or letting said work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this act.

Violations of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

In addition to the penalty herein provided, the offender may be enjoined, at the instance of the state forester, or of the fire warden of the district, from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the state forester, or of the fire warden of the district, to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions hereof.

History: En. Sec. 5, Ch. 95, L. 1927.

2778.6. Disposal of slashings. Every person, firm or corporation who shall hereafter cut any timber, logs, ties, posts, poles, cordwood or pulpwood or any other forest product upon lands within the state of Montana; shall remove any fire hazard to the property of others created by the slashings, incident to such cutting, by partial or complete disposal of said slashings, or by other procedure, to the extent and in the manner required by the state forester under the conditions obtaining, provided that expenditures in excess of fifteen cents (15c) for each one thousand (1000) feet board measure, or the equivalent thereof, of any merchantable timber cut shall not be required.

Every person, firm or corporation who shall hereafter purchase or contract to purchase logs, ties, posts, poles or pulpwood cut from forest lands within the state of Montana, shall give written notice to the state forester of said purchase within five (5) days after making said purchase or such contract to purchase; such notice shall disclose the name of the person, firm or corporation furnishing such forest product, the location of the land by section, township and range from which said forest product is cut or to be cut and the name of the owner or reputed owner of such land. Thereafter said purchaser shall withhold, in making payments for such forest product, a sum equal to fifteen cents (15c) for each one thousand (1000) feet board measure delivered under such contract, unless and until the state forester notify said purchaser that such sum may be paid on such contract. The state forester shall release said money so withheld only when he is satisfied that legal disposition of slash resulting from such cutting has been or will be made. If upon conclusion of such contract the state forester has not and does not release such sum so withheld, the purchaser shall thereupon forthwith remit the said sum so withheld to the state forester, who shall issue his receipt in duplicate therefor and deliver such duplicate receipts to said purchaser who shall thereupon deliver one (1) of said receipts in final payment of the money so withheld and such purchaser shall thereby be discharged from any and all liability for such money so withheld to the extent recited in and shown by such receipt, and the state forester shall retain such sum as security for the removal of slash hazard as provided by this act. In the event the state forester procures the removal of slash resulting from such cutting as provided in section 2778.7, he shall apply such sum so held by him or so much thereof as may be necessary to the payment of the costs of such removal.

History: En. Sec. 6, Ch. 95, L. 1927; amd. Sec. 1, Ch. 81, L. 1931.

2778.7. Slashings lien. If any person, firm or corporation shall fail, refuse or neglect to remove slash hazards hereafter created in accordance with the requirements of the state forester for a period of thirty (30) days

after the date of a written order to remove such slash hazards forwarded by registered mail to the person, firm or corporation required by this act to remove said slash hazards, by the state forester or his authorized representative, the state forester may procure the removal of the slashings, or such part thereof as he shall deem necessary and he shall immediately afterwards notify the person, firm or corporation that had failed to remove the slash hazards of the cost of their removal and demand payment of the cost thereof, which shall not be in excess of fifteen (15) cents per thousand (1000) feet board measure, or equivalent thereof, of any merchantable timber cut plus ten (10) per cent to cover additional costs incurred by the state. If payment of the sum demanded be not made to the state forester within thirty (30) days after the date of such demand, the state forester must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt. If the amount expended by the state forester for the removal of the slashings be not paid within the time herein required, a lien as security for the amount of the debt shall attach to the land on which the slashings were created and or the timber or other forest products cut or produced from such land from and after the date that notice of such lien shall be filed by the state forester in the office of the clerk and recorder of each county in which said land is situated.

The lien shall be known and recorded as a "slashings lien."

Upon the filing of such notice in the office of the clerk and recorder of the proper county it shall immediately and thereafter constitute a lien upon said land and or timber or other forest products until it shall have been released or satisfied.

History: En. Sec. 7, Ch. 95, L. 1927.

CHAPTER 251

FIRE ESCAPE AND EXIT REQUIREMENTS

Section 2779. Fire escapes—duty to provide on buildings, when.

2780. Adequate fire escape defined.

2781. Guide signs and exit lights.

2782. Fire marshal to enforce act.

2783. Inspection—notice to owners.

2784. Penalty for violation of act.

2785. Action to enjoin occupancy of building.

2779. Fire escapes—duty to provide on buildings, when. It shall be the duty of the owner entitled to the beneficial use, rental or control, or, if such owner be a non-resident, the occupant or lessee, of any building three or more stories in height, constructed or used, or intended to be used, in whole or in part, as a hospital, seminary, college, academy, schoolhouse, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, theater or any place of public amusement, lodge hall, or any hall, used for public gatherings, or any manufacturing establishment or industrial plant, wholesale or retail mercantile store, workshop, warehouse, office building, and any building erected by municipal, county or state authority, wherein public assemblies are permitted, or sleeping apartments are provided on any floor above the second, to cause to be erected and fixed to every such building one or more adequate fire escapes, which in no case shall be less than one such escape to each five thousand square feet of lot

area covered by such building; provided, that any building six or more stories in height shall have at least two such fire escapes to each five thousand square feet of lot area covered by such building; provided, that where the area and height of any building is such that the construction of one fire escape will meet the requirements of this act, and it is elected to construct an interior stairway-type escape, then, in such case, there shall be provided at least one other exit from each floor of said building, which exit shall be placed as remote from the entrance to the fire escape as is consistent with the construction of the building; and provided, further, that all fire escapes possible, consistent with accessibility, from stairways, elevator hatchways, and other openings in the floors, and as far apart as is consistent with the construction and location of the buildings; provided, that it shall be the duty of the owner entitled to the beneficial use, rental or control, or if such owner be a non-resident, the occupant or lessee, of any building two stories in height, already erected or which may hereafter be erected and used in whole or in part as a hotel, school, dormitory, theater or hospital, to cause to be erected an adequate number of stairways, or fire escapes which, in no case, shall be less than one, and one additional stairway or fire escape for each five thousand square feet of lot area covered by such building in excess of ten thousand square feet, which stairways or fire escapes shall be located as remote from each other as possible, and be easy of access from all parts of the building. A basement of any building that extends five feet or more above grade line shall be considered a story within the meaning of this act.

History: En. Sec. 1, Ch. 98, L. 1921; re-en. Sec. 2779, R. C. M. 1921. Earlier acts were Secs. 2505, 2506, Civ. C. 1895; amd. Secs. 1, 2, Ch. 53, L. 1907; Ch. 213, L. 1919.

2780. Adequate fire escapes defined. An adequate fire escape, provided for in the preceding section is defined to be a concrete stairway, an iron or steel stairway, an iron or steel straight chute, or which may be constructed of other fireproof material of equal strength, to which there shall be free, unoccupied and unobstructed passage, and free, unoccupied and unobstructed egress and ingress to and from the interior of the building, and may be erected on the exterior or interior of any building requiring fire escapes; provided, however, where outside stairways do not reach the ground, same must have an iron stairway from the lowest balcony to the ground, counter-balanced so that same shall remain in a horizontal position when not in use. This stair must be constructed in the same manner and of the same material as those of the upper balconies. When a suspended weight is used as a counter-balance, proper guides or places must be provided. It is hereby made the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction and erection of each type of fire escape authorized by this act, which specifications shall be based upon a working stress of not less than sixteen thousand pounds to the square inch for steel, twelve thousand pounds to the square inch for wrought iron, and seven hundred pounds to the square inch for concrete; provided, that specifications for interior fire escapes shall require that they be inclosed with non-combustible material, and that all door and window openings be properly protected with self-closing, fire-proof shutters and that all stairway escapes, interior and

exterior be continuous and suitably connected with the roof of the building. No fire escape shall be approved as complying with the provisions of this act, the material and erection of which are not at least the equivalent of the minimum specifications promulgated by the state fire marshal as herein provided. It shall also be the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction of stairways required for buildings two stories in height, as set forth in the preceding section, which stairways may be constructed of wood or other material and located on the interior or exterior of the building, but shall not be required to be inclosed.

History: En. Sec. 2, Ch. 98, L. 1921; re-en. Sec. 2780, R. C. M. 1921.

2781. Guide signs and exit lights. It shall be the duty of the owner entitled to the beneficial use, rental or control; or if the owner be a non-resident, the occupant or lessee of any building used or intended to be used, as described in section 2779, where fire escapes are required, also to provide and maintain, in good condition at all times, therein, proper guide signs and exit lights, which signs and lights shall be of a sufficient number on each floor to indicate the location of fire escapes and all entrances thereto. And it shall be unlawful to obstruct in any manner whatsoever any fire escape required by the provisions of this act, or any hallway, corridor, or entrance-way leading thereto.

History: En. Sec. 3, Ch. 98, L. 1921; re-en. Sec. 2781, R. C. M. 1921.

2782. Fire marshal to enforce act. The state fire marshal shall have general charge and supervision of the enforcement of the provisions of this act, and, for this purpose, it is hereby made the duty of any inspector under the jurisdiction of the state fire marshal or any person authorized to act in his stead, to assist the state fire marshal in giving effect to the terms and provisions hereof, and shall be subject to his direction and to the rules and regulations adopted for its enforcement.

History: En. Sec. 4, Ch. 98, L. 1921; re-en. Sec. 2782, R. C. M. 1921.

2783. Inspection—notice to owners. It shall be the duty of the state fire marshal, his deputies, and subordinates, the chief of the fire department of each city or village where a fire department is established, or the mayor of a city or village where no fire department exists, or the justice of the peace of a township in territory without the limits of a city or village, to enter into all buildings, and upon all premises within his jurisdiction, for the purpose of the examination of such premises for violations of this act, and when any building shall be found which requires the erection of fire escapes, and upon which fire escapes have not been erected according to the provisions of this act, to serve a written notice upon the party or parties whose duty it is to erect such fire escapes, which notice shall specify the time within which said fire escapes shall be erected, and which in no case shall be more than ninety days; and said notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the postoffice, directed to the last known address of the person to be notified. In case of buildings within the terms of this act, that are managed and controlled by a board of trustees, board of commissioners, or other governing body, notice may be

served on the president, secretary, or treasurer of such board of trustees, board of commissioners, or other governing body, to cause the erection of fire escapes on said buildings, as may be required; provided, that the occupant or lessee of any building is required to erect fire escapes under the provisions of this act, shall be entitled to reimburse himself for the cost and expense of erecting said fire escapes out of the rent or lease money of said premises, and such reimbursement shall not be construed to be a breach of any existing lease, contract, or any covenant thereof nor grounds for any action or damages ouster.

History: En. Sec. 5, Ch. 98, L. 1921; re-en. Sec. 2783, R. C. M. 1921.

2784. Penalty for violation of act. Any person failing, neglecting, or refusing to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars, and each days' failure to comply with any of the provisions of this act, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense, and it shall be the duty of the state fire marshal or any person authorized to act in his stead, to file complaint for violations of the provisions of this act in any court of competent jurisdiction within the county where said violations occur, and it shall be the duty of the county attorney of such county to forthwith prosecute all such complaints so filed.

History: En. Sec. 6, Ch. 98, L. 1921; re-en. Sec. 2784, R. C. M. 1921.

2785. Action to enjoin occupancy of building. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty so to do to erect fire escapes in accordance with this law, the attorney general of the state, or any county attorney of the county where any such building is located, shall bring an action against the owner, lessee, and occupants of any such building for an injunction enjoining the further occupancy of such building until compliance with this act. Such action may be brought in the county where such building is located.

History: En. Sec. 7, Ch. 98, L. 1921; re-en. Sec. 2785, R. C. M. 1921.

CHAPTER 252

REGULATION OF THE MANUFACTURE, STORAGE AND SALE OF EXPLOSIVES

- Section 2786. Definitions.
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- 2814. Penalty when death caused by violation of this act.
- 2815. Storage of kerosene, petroleum or caps in unincorporated towns or villages—disposal of materials after dark by artificial light, regulation of.

2786. Definitions. The term “explosive” or “explosives” whenever used in this act shall be held to mean and include any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb.

The word “magazine” as used herein means any building or other structure, other than a factory building, used for the storage of explosives.

The term “building” or “buildings” as used herein shall be held to mean and include only a building or buildings occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble.

The term “factory building” as used herein shall be held to mean any building or other structure containing explosives in which the manufacture of explosives or any part of the manufacture is carried on.

The term “railroad” as used herein shall be held to mean and include any steam, electric or other railroad which carries passengers for hire.

The term “highway” as used herein shall be held to mean and include any public street, public alley or public road.

The term “efficient artificial barricade” as used herein shall be held to mean an artificial mound or properly riveted wall of earth of a minimum thickness of not less than three feet.

The term “person” as used herein shall be held to mean and include firms and corporations, as well as natural persons.

Words used in the singular number shall include the plural, and the plural the singular.

History: En. Sec. 1, Ch. 129, L. 1917; re-en. Sec. 2786, R. C. M. 1921.

References

Cashin v. Northern Pac. Ry. Co., 96 M 92, 28 P 2d 862.

2787. Prohibitions and exceptions. No person shall manufacture, have, keep, or store explosives in this state, except in compliance with this act, except that explosives may be manufactured without compliance with this act in the laboratories of schools, colleges and similar institutions, for the purpose of investigation and instruction.

It shall be unlawful to sell, give away, or otherwise dispose of, or deliver to any person under eighteen (18) years of age any explosives, whether said person is acting for himself or for any other person.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R. C. M. 1921.

2788. **Quantity and distance table for explosive factories and magazines.** All factory buildings and magazines in which explosives are had, kept, or stored, must be located at distances from buildings, railroads and highways in conformity with the following quantity and distance table, and this table shall be the basis on which applications for certificate of compliance, as provided in section 2794, shall be made and the certificate of compliance issued; provided that the quantity and distance table may be disregarded and a certificate of compliance may be issued for two second-class magazines (see section 2792) in any building not otherwise prohibited by law, if the contents and location of the magazine are as follows: (a) One second-class magazine containing not more than fifty pounds of explosives may be allowed if the said second-class magazine is placed on wheels and located not more than ten feet from, on the same floor with and directly opposite to the entrance on the floor nearest the street level; (b) One second-class magazine containing not more than five thousand blasting caps may be allowed if the said second-class magazine is placed on wheels and located on the floor nearest the street level.

The quantity and distance table governing the manufacture, keeping, and storage of explosives is as follows:

QUANTITY AND DISTANCE TABLE

Column One				Column Two	Column Three	Column Four
Quantity that may be had, kept or stored				Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Blasting and Electric Blasting Caps		Other Explosives				
Number Over	Number Not Over	Pounds Over	Pounds Not Over	Feet	Feet	Feet
1,000	5,000			30	20	10
5,000	10,000			60	40	20
10,000	20,000			120	70	35
20,000	25,000		50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390

QUANTITY AND DISTANCE TABLE—(Continued)

Column One				Column Two	Column Three	Column Four
Quantity that may be had, kept or stored				Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Blasting and Electric Blasting Caps		Other Explosives				
Number Over	Number Not Over	Pounds Over	Pounds Not Over	Feet	Feet	Feet
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
2,500,000	3,000,000	5,000	6,000	1,560	940	470
3,000,000	3,500,000	6,000	7,000	1,610	970	490
3,500,000	4,000,000	7,000	8,000	1,660	1,000	500
4,000,000	4,500,000	8,000	9,000	1,700	1,020	510
4,500,000	5,000,000	9,000	10,000	1,740	1,040	520
5,000,000	7,500,000	10,000	15,000	1,780	1,070	530
7,500,000	10,000,000	15,000	20,000	1,950	1,170	580
10,000,000	12,500,000	20,000	25,000	2,110	1,270	630
12,500,000	15,000,000	25,000	30,000	2,260	1,360	680
15,000,000	17,500,000	30,000	35,000	2,410	1,450	720
17,500,000	20,000,000	35,000	40,000	2,550	1,530	760
		40,000	45,000	2,680	1,610	800
		45,000	50,000	2,800	1,680	840
		50,000	55,000	2,920	1,750	880
		55,000	60,000	3,030	1,820	910
		60,000	65,000	3,130	1,880	940
		65,000	70,000	3,220	1,940	970
		70,000	75,000	3,310	1,990	1,000
		75,000	80,000	3,390	2,040	1,020
		80,000	85,000	3,460	2,080	1,040
		85,000	90,000	3,520	2,120	1,060
		90,000	95,000	3,580	2,150	1,080
		95,000	100,000	3,630	2,180	1,090
		100,000	125,000	3,670	2,200	1,100
		125,000	150,000	3,800	2,280	1,140
		150,000	175,000	3,930	2,360	1,180
		175,000	200,000	4,060	2,440	1,220
		200,000	225,000	4,190	2,520	1,260
		225,000	250,000	4,310	2,590	1,300
		250,000	275,000	4,430	2,660	1,340
		275,000	300,000	4,550	2,730	1,380

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R. C. M. 1921.

2789. Maximum allowed for storage or keeping in building or magazine. No quantity in excess of three hundred thousand pounds, or in case of

blasting caps no number in excess of twenty million caps, shall be had, kept or stored in any factory building or magazine in this state.

History: En. Sec. 4, Ch. 129, L. 1917; re-en. Sec. 2789, R. C. M. 1921.

2790. Reduction of distances. Whenever the building, railroad or highway to be protected is effectually screened from the factory, building or magazine, where explosives are had, kept or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the factory building or magazine to any part of the building to be protected, will pass through such intervening natural or efficient artificial barricade, and any straight line drawn from the top of any side wall of the factory building or magazine to any point twelve feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in columns 2, 3 and 4 of the quantity and distance table may be reduced one-half.

History: En. Sec. 5, Ch. 129, L. 1917; re-en. Sec. 2790, R. C. M. 1921.

2791. Containers. Except only at a factory building, and except while being used, no person shall have, keep or store explosives at any place within this state unless such explosives are completely enclosed or encased in tight metallic, wooden or fibre containers, and, except while being transported or used or in the custody of a common carrier awaiting shipment or pending delivery to consignee during the time permitted by federal law, explosives shall be kept and stored in a magazine constructed and operated as provided in the following section, and no person having explosives in his possession or control shall, under any circumstances, permit or allow any grains or particles to be or remain on the outside or about the containers in which such explosives are held. All containers in which explosives are held shall be plainly marked with the name of the explosive contained therein.

History: En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R. C. M. 1921.

2792. Magazines—classes and specifications. Magazines in which explosives may lawfully be kept or stored shall be of two classes, as follows:

(a) Magazines of the first class shall consist of those containing explosives exceeding fifty pounds, and shall be constructed of brick, concrete, iron, or wood, covered with iron, and shall have no openings except for ventilation and entrance. The doors of such magazine must at all times be kept closed and locked, except when necessarily open for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks of fire through the same. Upon each end of such magazine, above the side walls thereof, or upon its barricade, there shall at all times be conspicuously posted a sign with the words "Magazine—Explosives—Dangerous" legibly printed thereon in letters not less than six inches high. No matches or fire of any kind shall at any time be permitted at any such magazine. No package of explosives shall at any time be opened within fifty feet of any magazine, nor shall

any explosives be kept therein except in the original containers. Magazines in which more than fifty pounds of explosives are kept and stored must be detached from other structures, and magazines where more than five thousand pounds of explosives are kept and stored must be located at least two hundred feet from any other magazine, and magazines where quantities of explosives over twenty-five thousand pounds are kept and stored must have an increase over two hundred feet of two and two-thirds feet for each one thousand pounds of explosives in excess of twenty-five thousand pounds stored therein; provided, that where magazines are protected one from the other by natural or efficient artificial barricade, the distance above specified may be reduced one-half.

(b) Magazines of the second class shall be made of fire-proof material or wood, covered with sheet iron, and no more than fifty pounds of explosives shall at any time be kept or stored therein, and except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each magazine there shall at all times be kept conspicuously posted a sign with the words "Magazine—Explosives—Dangerous" legibly printed thereon, and not more than two such magazines shall be had or kept in any building.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R. C. M. 1921.

2793. Blasting caps, storage of. No blasting caps, or other detonating or fulminating caps, or detonators, shall be kept or stored in any magazines in which other explosives are kept or stored.

History: En. Sec. 8, Ch. 129, L. 1917; re-en. Sec. 2793, R. C. M. 1921.

2794. Certificate of compliance. All persons engaged in keeping or storing explosives on the date when this act takes effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives after this act takes effect shall, before engaging in the keeping or storing of explosives, make a report in writing, subscribed to by such persons, or his agent, to the state fire marshal stating:

(1) The location of the magazine, if then existing or in case of a new magazine, the proposed location of such magazine.

(2) The kind of explosives that are kept or stored or intended to be kept or stored, and the maximum quantity that is intended to be kept or stored thereat.

(3) The distance that such magazine is located or intended to be located from the nearest buildings, railroads, and highways.

The state fire marshal shall, as soon as may be after receiving such report cause an inspection to be made of the magazine, if then constructed, and in the case of a new magazine as soon as may be after same is found to be constructed in accordance with the specifications provided in section 2792 of this code, the state fire marshal shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance table set forth in section 2788 of this code, and shall issue a certificate to the person applying therefor, showing compliance with the provisions of this act, which certificate shall set forth the maximum quantity of explosives that may be had, kept or stored in said magazine.

Such certificate of compliance shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical condition surrounding said magazine at the time of the issuance of the certificate of compliance therefor, such as

- (a) The erection of buildings nearer said magazine,
- (b) The construction of railroads nearer said magazine, or

(c) The opening for public travel of highways nearer said magazine, then the amounts of explosives which may be lawfully had, kept or stored in said factory or magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the certificate of compliance, and the state fire marshal shall modify or cancel such certificate in accordance with the changed conditions. Whenever any person to whom a certificate of compliance has been issued, keeps or stores in the magazine covered by such certificate of compliance, any quantity of explosives in excess of the maximum amount set forth in said certificate of compliance, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the state fire marshal is authorized to cancel such certificate of compliance. Whenever a certificate of compliance is canceled by the state fire marshal for any cause hereinbefore specified, the state fire marshal shall notify the person to whom such certificate of compliance is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine within the time specified in said notice shall constitute a violation of this act.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R. C. M. 1921.

2795. License. Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than one dollar nor more than twenty-five dollars. Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer.

History: En. Sec. 10, Ch. 129, L. 1917; re-en. Sec. 2795, R. C. M. 1921.

2796. Inspection. The state fire marshal shall make, or cause to be made, at least one inspection during every year, of each licensed factory or magazine.

History: En. Sec. 11, Ch. 129, L. 1917; re-en. Sec. 2796, R. C. M. 1921.

2797. Who may enter. No person, except an official as authorized herein or a person authorized to do so by the owner thereof, or his agent, shall enter any factory, building, magazine, or car containing explosives in this state.

History: En. Sec. 12, Ch. 129, L. 1917; re-en. Sec. 2797, R. C. M. 1921.

2798. Transportation of explosives. Every vehicle while carrying explosives shall display upon an erect pole at the front end of such vehicle and at such height that it shall be visible from all directions, a red flag with the word "danger" printed, stamped or sewed thereon, in white letters at least six inches in height or in lieu of such flag the words "explo-

sives—dangerous” must be painted on, or attached to the end and each side of such vehicle in white letters at least six inches in height.

It shall be unlawful for any person in charge of a vehicle containing explosives to smoke in or upon such vehicle, to drive the vehicle while intoxicated, to drive the vehicle in a careless or reckless manner, or to load or unload such vehicle in a careless or reckless manner.

It shall be unlawful for any person to place or carry or cause to be placed or carried, any metal tool or other similar piece of metal, in the bed or body of a vehicle containing explosives.

It shall be unlawful for any person to place or carry or cause to be placed or carried, in the bed or body of any vehicle containing explosives, any exploders, detonators, blasting caps, or other explosive material, or to carry in or upon any such vehicle any matches.

History: En. Sec. 13, Ch. 129, L. 1917; re-en. Sec. 2798, R. C. M. 1921.

2799. Fire arms not to be discharged, when. No person shall discharge any fire arms at or against any magazine or factory building.

History: En. Sec. 14, Ch. 129, L. 1917; re-en. Sec. 2799, R. C. M. 1921.

2800. Penalties. Except as otherwise provided in this act, whoever fails to comply with or violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars.

History: En. Sec. 15, Ch. 129, L. 1917; re-en. Sec. 2800, R. C. M. 1921.

2801. Possession of shells or bombs for unlawful use. Any person who shall have in his possession or control any shell, bomb or similar device, charged or filled with one or more explosives, intending to use the same or cause the same to be used for an unlawful purpose, shall be deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not less than five years nor more than twenty-five years. The possession or control by any person, of any such device, so charged or filled, shall be deemed prima facie evidence of an intent to use the same, or cause the same to be used for an unlawful purpose.

History: En. Sec. 16, Ch. 129, L. 1917; re-en. Sec. 2801, R. C. M. 1921.

2802. Effect of unconstitutionality of act. In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act.

History: En. Sec. 17, Ch. 129, L. 1917; re-en. Sec. 2802, R. C. M. 1921.

2803. Exemptions. Nothing contained in this act shall apply to the regular military or naval forces of the United States, nor the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this state, or of any municipality or county within this state, providing the same are acting in their official capacity, and in the proper performance of their duties.

Nothing contained in this act shall apply to explosives while being transported upon vessels or railroad cars in conformity with the regulations adopted by the interstate commerce commission; nor to transportation or use of blasting explosives for agricultural or prospecting purposes

in quantity not exceeding two hundred pounds at any one time; nor to any explosives in quantities not exceeding five pounds at any one time; nor to any person or persons carrying ammunition in reasonable amounts.

History: En. Sec. 18, Ch. 129, L. 1917; re-en. Sec. 2803, R. C. M. 1921.

2804. Existing ordinances not affected. Nothing contained in this act shall affect any existing ordinance, rule or regulation of any city or municipality not less restrictive than this act governing the manufacture, storage, and sale of explosives, or affect, modify, or limit the power of cities or municipalities in this state to make ordinances, rules, or regulations not less restrictive than this act, governing the manufacture, storage, sale, use, or transportation of explosives within their respective corporate limits.

History: En. Sec. 19, Ch. 129, L. 1917; re-en. Sec. 2804, R. C. M. 1921.

2805. Explosives, misrepresentations concerning percentage of nitro-glycerine. Any person or corporation engaged in the business of selling blasting or giant powder by whatever name the same shall be known containing nitro-glycerine, or equivalent explosive compound in any form, who shall sell or vend any such blasting powder upon the representation that the same contains a certain percentage or proportion of nitro-glycerine, or equivalent explosive compound, or who being applied to for blasting powder containing a certain percentage or proportion of nitro-glycerine or equivalent explosive compound shall sell or deliver any such blasting powder, containing a less percentage or proportion of nitro-glycerine, or equivalent explosive compound, than represented or than such powder as was applied for, shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars.

History: En. Sec. 1, Ch. 124, L. 1909; re-en. Sec. 2805, R. C. M. 1921.

2806. Regulating sales of explosives. That every person, company or corporation, manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substances, shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same, which record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof, and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor. Such record shall at all times be open to the inspection of the state inspector of mines, or any peace officer.

History: En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907; re-en. Sec. 2806, R. C. M. 1921.

2807. Storage of explosives in mines. No person, company or corporation shall store, deposit or keep in any mine a greater quantity than three thousand pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this section shall be stored, deposited, or kept in any place where its accidental explosion would cut off the escape of miners working in said mine. *

History: En. Sec. 708, Pen. C. 1895; Sec. 8546, Rev. C. 1907; re-en. Sec. 2807, R. C. M. 1921.

Negligence Per Se

An allegation of negligence in storing dynamite in a mine, in a quantity greater than three thousand pounds, or in storing that or any other explosive in a mine where, should an explosion accidentally take place, escape by those working in the mine would be cut off, charges the violation of a specific duty imposed by this section, and such a violation is negli-

gence per se. *Westlake v. Keating Gold Min. Co.*, 48 M 120, 128, 136 P 38.

Id. Plaintiff who, at the time of the explosion of a quantity of dynamite stored at a place in a mine contrary to the provisions of this section, was not so situated as to have his escape from the mine cut off by it, could not charge as an act of negligence the storage of the powder in a place where, in case of accidental discharge, escape by those working in the mine would be cut off, since the causal connection between his injuries and the stoppage of egress from the mine would be lacking.

2808. Storage of explosives in cities, etc. No person, company, or corporation shall store, deposit, or keep within one mile of the limits of any city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance, in greater quantities than one hundred pounds, or more than one thousand giant caps, at any one time, nor shall such explosives be stored, deposited or kept in any quantities whatever within one mile of such city, town, or village, except in a magazine constructed as hereinafter described; provided, that this section shall not be construed to prevent any person, company or corporation, operating a mine within one mile of the limits of such city, town, or village, from storing powder for use in such mine in the manner prescribed in sections 2807 and 2809 of this code; provided also, that this section shall not prevent the keeping of a reasonable amount of gunpowder, not exceeding fifty pounds, in a safe place for sale.

History: En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R. C. M. 1921.

Use of the Term City or Town

An illustration is found in this section and the next succeeding section of the

frequent legislative use of the term "city or town" without any definite prefix, but under circumstances which would render it absurd to hold that only incorporated cities and towns are meant. *State ex rel. Powers v. Dale*, 47 M 227, 230, 131 P 670.

2809. Construction and location of magazines. It shall be unlawful to store, deposit, or keep any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance, in amounts exceeding one hundred pounds, elsewhere than in storehouses or magazines constructed as follows:

The walls of such storehouses and magazines shall be constructed entirely of stone or brick. There shall be no opening in such magazine except necessary ventilation, and one entrance not exceeding thirty inches in width. There shall be two doors to such entrance, an outer door opening outward and an inner door opening inward. The said doors shall be of plank not less than two inches in thickness, and both doors shall be entirely covered with one-eighth inch iron, and shall be hinged upon two or more iron hooks securely anchored in the walls of such magazine. Both said doors shall be kept securely locked at all times when powder is stored therein, except when it is necessary to store therein or remove therefrom such powder or other explosives. Such storage room or magazine shall be well and securely roofed with fire-proof and bullet-proof material. Such magazine shall not be constructed within less than one-fourth of a mile of any human habitation except by the permission of the

county commissioners, nor shall any magazine constructed within one mile of the limits of any city, town, or village be constructed within one hundred feet of any building owned by any other person.

History: En. Sec. 710, Pen. C. 1895; re-en. Sec. 8548, Rev. C. 1907; re-en. Sec. 2809, R. C. M. 1921.

References

Cited or applied as section 8548, revised codes, in *State ex rel. Powers v. Dale*, 47 M 227, 230, 131 P 670.

2810. Magazines, etc., to bear warning signs. Every storehouse or magazine constructed as provided in the foregoing section, in which shall be stored, deposited, or kept any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance, shall at all times have posted above the entrance thereof a sign-board on which shall be painted in conspicuous letters not less than four inches in length the words "explosives—dangerous." Every dray, wagon, freight car, or other vehicle in which shall be transported, transferred, or delivered any of the said explosives, shall bear on each side thereof a similar sign with conspicuous letters not less than two inches in length.

History: En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R. C. M. 1921.

2811. Transportation of explosives with passengers forbidden, when. It shall be unlawful to knowingly transport or deliver or cause to be delivered giant or Hercules powder, giant caps, nitro-glycerine, nitro-leum, blasting or nitrated oil, or powder mixed therewith or fibre saturated therewith, or any other highly explosive substance in any quantities whatever on any vessel or vehicle whatever carrying passengers by land or water between any points within the state of Montana; provided, that on mixed trains intended for service on railroad lines leading to mining localities or camps the aforesaid explosive substances or any of them may be lawfully carried, by hanging a placard on each side of the car or cars carrying the explosives, reading thus: "This car is loaded with powder"—each letter of said placard to be at least two inches long, but this proviso shall not permit the carrying of any of said explosive substances in the same car or coach in which the passengers are carried.

History: En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907; re-en. Sec. 2811, R. C. M. 1921.

2812. Careless use of explosives a misdemeanor. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance, whereby any human being is intimidated, terrified, or endangered, shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R. C. M. 1921.

Operation and Effect

Alleged defect in the title to the original act relating to the handling of explosives, of which this section and section 2813 were a part, and which act was carried forward in three subsequent codifications of the laws, held cured by the adop-

tion of such codes by the legislature. *Cashin v. Northern Pac. Ry. Co.*, 96 M 92, 113, 28 P 2d 862.

Id. Contention that this section, dealing with reckless handling of blasting powder, by the enactment of chapter 129, laws of 1917 (now sections 2736-2804), has been repealed by implication, held not meritorious, that chapter not dealing with the subject matter of this section.

2813. Penalties. Any person, or association of persons, violating any of the provisions of this act, shall be punished by imprisonment in the pen-

itentiary not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

History: En. Sec. 714, Pen. C. 1895;
re-en. Sec. 8552, Rev. C. 1907; re-en. Sec.
2813, R. C. M. 1921.

References
Cashin v. Northern Pac. Ry. Co., 96 M
92, 132, 28 P 2d 862.

2814. Penalty when death caused by violation of this act. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported, contrary to the provisions of the foregoing sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants, or employees to so unlawfully store, keep, handle, or transport the same, shall be guilty of manslaughter, and, on conviction, shall be punished by imprisonment in the state penitentiary for a period not exceeding ten years.

History: En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R. C. M. 1921.

2815. Storage of kerosene, petroleum or caps in unincorporated towns or villages—disposal of materials after dark by artificial light, regulation of. No person or persons shall store, or keep in any store, warehouse, or any other building within the limits of any unincorporated town or village, more than five thousand giant caps at any one time, or any coal oil, kerosene or petroleum, exceeding sixty gallons, other than in original packages, within the limits of the said unincorporated town or village, or shall sell, lend, barter or dispose of, deliver or receive the same, or any or either of the said articles or materials, in the section herein enumerated, after dark, by the aid of any lamp, lantern, candle, match, or other artificial light, except electric light.

History: En. Sec. 3, p. 72, L. 1893; re-en. Sec. 716, Pen. C. 1895; re-en. Sec. 8554, Rev. C. 1907; re-en. Sec. 2815, R. C. M. 1921.

CHAPTER 253

PUBLIC DANCE REGULATION OUTSIDE CITY OR TOWN LIMITS

- Section 2815.1. Public dance regulation—definitions.
2815.2. License for public dance.
2815.3. County commissioners to fix dance hall license fee.
2815.4. Immoral or suggestive dancing prohibited—lights required.
2815.5. Rules and regulations for public dances to be made by county commissioners—officers' duty.
2815.6. Application for issuance of license—display of license required.
2815.7. Commissioners may revoke license—grounds for revocation.
2815.8. Enforcement of provisions concerning public dance.
2815.9. Violation and penalty.

2815.1. Public dance regulation—definitions. As used in this act, the term "public dance" shall be construed to mean any dance to which the public generally may gain admission with or without the payment of an admission fee whether said admission fee is paid in the form of club dues, membership fees, or in any other manner. The term "dance hall" shall be construed to mean any room, hall, pavilion, building or other structure kept for the purposes of conducting therein public dances or dancing.

History: En. Sec. 1, Ch. 131, L. 1929.

2815.2. License for public dance. No person, co-partnership or corporation shall hold any public dance or conduct or maintain any dance hall without the limits of incorporated cities or towns without having first procured from the board of county commissioners of the county in which it is proposed to conduct such dance or dance hall a license so to do. Temporary license of a period not exceeding thirty days may be issued by the clerk and recorder of the county in which such dance is to be held. Licenses for dance halls shall be issued by the year or by the quarter, as requested by the applicant. A license for a single public dance shall entitle the holder thereof to conduct such dance only on the day and at the place specified in the license. No license to conduct a public dance or dance hall shall be granted unless the applicant therefor be of good moral character. No license shall be granted to any corporation, but if any dance hall be conducted by a corporation the license shall issue to the manager or other directing head thereof.

History: En. Sec. 2, Ch. 131, L. 1929.

2815.3. County commissioners to fix dance hall license fees. The board of county commissioners of each county shall, by a general order, from time to time, fix the fees to be charged for licenses granted hereunder, such fees, however, not to be less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for an annual dance hall license, nor less than one dollar (\$1.00) nor more than five dollars (\$5.00) for a license for a single dance. Single dances held by grange, patriotic, fraternal organizations or strictly community dances may be held without a permit. The county commissioners may issue a permit without charge, for grange, patriotic, fraternal or community dances.

History: En. Sec. 3, Ch. 131, L. 1929.

2815.4. Immoral or suggestive dancing prohibited—lights required. No immoral, indecent, suggestive or obscene dance shall be given or carried on in any dance hall or any dance licensed hereunder. All buildings, halls, rooms, pavilions or other places in which public dances are carried on, as well as all halls, corridors and rooms leading thereto or connected therewith shall at all times while open to the public, be well lighted.

History: En. Sec. 4, Ch. 131, L. 1929.

2815.5. Rules and regulations for public dances to be made by county commissioners—officers' duty. The board of county commissioners shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act with respect to the conduct of public dances, and may in its discretion refuse to grant licenses for dance halls to be located at such places or to be conducted at such times as will in their judgment interfere with the comfort and happiness of the community in which such proposed dance hall is to be located.

All peace officers of the state of Montana shall have free access to public dances and dance halls for the purpose of inspection and to enforce compliance with the provisions of this act.

History: En. Sec. 5, Ch. 131, L. 1929.

2815.6. Application for, and issuance of license—display of license required. Applications for licenses hereunder shall be filed with the clerk of the board of county commissioners and be accompanied with a receipt showing the payment to the county treasurer of a license fee. After determining to grant a license to the applicant, the board shall notify the clerk and recorder, who shall issue the license to the applicant. All licenses granted hereunder shall be kept posted in a conspicuous place on the licensed premises.

History: En. Sec. 6, Ch. 131, L. 1929.

2815.7. Commissioners may revoke license—grounds for revocation. The license of any public dance hall may be forfeited or revoked by the county commissioners for disorderly or immoral conduct on the premises.

History: En. Sec. 7, Ch. 131, L. 1929.

2815.8. Enforcement of provisions concerning public dances. The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

History: En. Sec. 8, Ch. 131, L. 1929.

2815.9. Violations and penalty. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding one hundred dollars (\$100.00) or by imprisonment for a term not exceeding thirty (30) days or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 131, L. 1929.

CHAPTER 254

MONTANA BEER ACT

Section	2815.10.	Citation of act.
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	2815.31.	Sale of beer by retailer—consumption on premises.
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- 2815.36. Qualifications of retail licensee.
- 2815.37. Limitations on issuance of club license.
- 2815.38. Sale of beer under club license.
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- 2815.42. Qualifications of waiters to serve beer.
- 2815.43. License to retailers outside city or town limits.
- 2815.44. Fees for licenses—expiration date—regulation by cities and towns.
- 2815.45. Revocation or suspension of license.
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- 2815.47. Penalties for violations—jurisdiction.
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- 2815.50. Revenue to be paid to state treasurer—audit of books—disposition of revenue.
- 2815.51. Brewers and wholesalers not to be interested in retailers financially.
- 2815.52. Sale of beer by state board of liquor control unlawful.
- 2815.53. Election to determine whether or not beer should be sold in county to be ordered upon application of one-third ($\frac{1}{3}$) of the voters of any county.
- 2815.54. Notice of election.
- 2815.55. Ballots—what to contain.
- 2815.56. Election—how held.
- 2815.57. Effect when vote is against sale of beer.
- 2815.58. No election more than once in two (2) years.
- 2815.59. Election—how contested.

2815.10. Citation of act. This act may be cited as the "Montana Beer Act."

History: En. Sec. 1, Ch. 106, L. 1933.

References

Beer R. P. Assn. v. State Bd. of Equalization, 95 M 30, 32, 25 P 2d 128.

2815.11. Definitions. In this act the expression:

(a) "Board" as used in this act means the state board of equalization, which shall administer the act under its provisions ex officio and without additional compensation.

(b) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any other similar products in drinkable water.

(c) "Brewer" means any person having a factory or an establishment adapted for the making of beer.

(d) "Club" means any association of individuals for purposes of mutual entertainment and convenience and shall include the premises occupied or used for any such purpose.

(e) "Club Member" means a person who, whether as a charter member or admitted according to the by-laws or rules of the club, has become a member thereof who maintains his membership by the payment of his regular periodic dues in the manner provided by such rules or by-laws and whose name and address are entered in the list of membership supplied to the board at the time of the application for a club license under this act, or if admitted thereafter within ten (10) days after his admission.

(f) "Person" includes every partnership, corporation or association.

(g) "Retailer" means any person engaged in the sale and distribution of beer, either on draught or in bottles, to the public to be served and consumed on the premises of such retailer, or in the sale or distribution of beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off such premises.

(h) "Vehicle" means any means of transportation by land or by water or by air and includes everything made use of in any way whatever for such transportation.

(i) "Wholesaler" means any person having a store or establishment for the sale and distribution of beer in wholesaling or jobbing quantities, or for the sale and distribution of beer in original packages to the public with intent that such packages shall be delivered or taken away from the premises of such wholesaler in unbroken packages for consumption off the premises of such wholesaler.

History: En. Sec. 2, Ch. 106, L. 1933;
amd. Sec. 1, Ch. 46, Ex. L. 1933.

References
Beer R. P. Assn. v. State Bd. of Equalization, 95 M 30, 32, 25 P 2d 128.

2815.12. Powers of board to effectuate act. The board shall have power:

(a) To do all such things as are deemed necessary or advisable for the purpose of carrying into effect the provisions of this act and regulations made thereunder.

(b) Without in any way limiting or being limited by the foregoing, the board may make such regulations as are necessary and feasible for the purpose of carrying into effect the provisions of this act, and such regulations shall have the full force and effect of law.

(c) The board shall prescribe forms of applications and licenses to carry out the provisions of this act.

History: En. Sec. 3, Ch. 106, L. 1933; amd. Sec. 2, Ch. 46, Ex. L. 1933.

2815.13. Beer as contemplated by act. Beer containing one-half of one per cent ($\frac{1}{2}\%$), or more, of alcohol by volume and not more than three and two tenths per cent (3.2%) of alcohol by weight, or beer of an alcoholic content declared by the Congress of the United States to be non-intoxicating, is hereby declared to be non-intoxicating and may be manufactured and/or sold or transported in and into this state, or possessed therein, in the manner and under the conditions prescribed in this act and not otherwise.

History: En. Sec. 4, Ch. 106, L. 1933.

2815.14. Possession, manufacture or disposal of beer in other manner than prescribed unlawful. It shall be unlawful to manufacture or sell, or dispose of, or possess for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this act.

History: En. Sec. 5, Ch. 106, L. 1933.

2815.15. Applications for sale or manufacture of beer—qualifications of applicant. Any person, desiring to manufacture and sell beer under the provisions of this act, shall first apply to the board for a permit so to do

and pay with such application the license fee herein prescribed; the board shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the board shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the board shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 6, Ch. 106, L. 1933.

2815.16. Brewers' monthly report—power of board to inspect books and premises. Every brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the board of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the board, and the board shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him.

History: En. Sec. 7, Ch. 106, L. 1933.

2815.17. Penalty for brewers' failure to file statement. Any brewer who fails to make the return to the board provided for in section 2815.16, shall be liable to a penalty of not less than fifty dollars (\$50) per day for each day of delay, and any brewer who refuses to allow such examination, as provided for in section 2815.16, or fails to make an accurate return according to the manner herein prescribed, shall be guilty of an offense and shall be liable to a fine not exceeding one thousand dollars (\$1,000).

History: En. Sec. 8, Ch. 106, L. 1933.

2815.18. Sale of beer by brewers—to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any wholesaler, retailer, club or common carrier holding and having a license under this act.

History: En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933.

2815.19. Sale by brewers to public. It shall be lawful for any brewer to sell, deliver or distribute beer manufactured by him in original packages to the public with intent that such packages shall be delivered or taken away from the premises of such brewer in unbroken packages for consumption off the premises of such brewer.

History: En. Sec. 10, Ch. 106, L. 1933.

2815.20. Brewers not to retail beer, when. It shall be unlawful for any brewer or breweries to have or own any permit to sell or retail beer at any place or premises; it being the declared intention to prohibit brewers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer by them manufactured in original packages at either wholesale or retail.

History: En. Sec. 11, Ch. 106, L. 1933.

2815.21. Labeling of beer bottles and barrels. Every brewer, manufacturing and selling beer, shall put upon all bottles containing beer, a dis-

tinctive label, showing the nature of the contents, the name of the brewer, and the place where the beer was brewed, and shall show clearly on all barrels or other receptacles containing beer so manufactured, whether bottled or otherwise, the nature of the contents, the name of the brewer, and the place where the beer was brewed. For the purpose of this section, the contents of bottles, barrels, or other receptacles containing beer shall be shown by the use of the word "beer," "ale," "stout," or "porter," on the outside of all bottles, barrels and receptacles.

History: En. Sec. 12, Ch. 106, L. 1933.

2815.22. To whom brewer may sell and deliver—revocation and suspension of license—appeal—tax on beer. (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, may, upon payment of a fee of seven hundred fifty dollars (\$750.00), be licensed by the board in accordance with the provisions of this act, and such regulations as may be prescribed by the board to sell and deliver:

(a) Beer and malt liquors to a vendor;

(b) Beer to licensees who are entitled to purchase beer from a brewer under this act; or to do any one or more of such things.

(2) The board may, in its discretion, grant or refuse such license and may from time to time, in the exercise of like discretion, with or without any hearing or the assigning of reason therefor, suspend or cancel any such license, and all rights of the brewer to sell or deliver beer or malt liquor thereunder. When the board shall have refused to grant a brewer's license, as herein provided for, or shall revoke or suspend a license previously issued by it, the board shall notify the applicant or the licensee, as the case may be, in writing by registered mail to the address of such applicant or licensee, of its action, giving the reasons therefor, and thereupon such applicant or licensee shall have a right of appeal to the district court of the county in which he shall reside, from the action of the board, by filing a notice with the clerk of the district court and paying the filing fee required to commence a suit or action in the district court, which appeal must be so taken within thirty (30) days after the order made and entered by the board. The trial shall be had before the district court upon the record as presented to the board and upon which its decision was rendered and there shall not be any additional evidence introduced or anything in the nature of a trial de novo.

(3) In addition to the annual license tax hereby imposed, a tax of one dollar (\$1.00) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel sold by such licensed brewer, which said tax shall be due at the end of each month and shall be payable with the return required to be made under the provisions of section 2815.16.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933.

2815.23. Wholesalers' licenses—application for and issuance of. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act shall apply to the board for a permit to do so and tender with his application the license fee hereinafter provided for.

Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the board shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such wholesaler. If the board shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933.

2815.24. Monthly report of wholesaler. Every wholesaler, licensed to do business in this state, as herein provided, shall on or before the fifteenth day of each month, make an exact return to the board of the amount of beer manufactured in this state, sold and delivered by him, and also of the amount of beer manufactured in places outside of the state, sold and delivered by him, during the previous month, and of his inventory in the manner and form as shall be prescribed by the board, and the board shall have the right at any time to make an examination of the said wholesaler's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand.

History: En. Sec. 15, Ch. 106, L. 1933.

2815.25. Penalty for wholesalers' failure to file statement—payment of tax. Any wholesaler who fails to make the return to the board provided for in section 2815.24, shall be liable to a penalty of not less than fifty dollars (\$50) per day for each day of delay, and any wholesaler who refuses to allow such examination, as provided for in section 2815.24, or fails to make an accurate return according to the manner prescribed, shall be guilty of an offense and shall be liable to a fine not exceeding one thousand dollars (\$1,000). With such return, the said wholesaler shall pay to the board the amount of tax upon all beer not manufactured in this state, on the basis hereinafter provided, which shall have been sold by him during such previous month.

History: En. Sec. 16, Ch. 106, L. 1933.

2815.26. To whom wholesaler may sell. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, club or to a common carrier, holding and having a license under this act.

History: En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933.

2815.27. When wholesaler may sell to public. It shall be lawful for any wholesaler to sell, deliver or distribute any beer purchased or acquired by him to the public in the original packages of quantities not less than two (2) gallons, with the intent that such packages shall be taken away from the premises of such wholesaler in unbroken packages for consumption off the premises of such wholesaler.

History: En. Sec. 18, Ch. 106, L. 1933;
amd. Sec. 7, Ch. 46, Ex. L. 1933.

References

Beer R. P. Assn. v. State Bd. of Equalization, 95 M 30, 32, 25 P 2d 128.

2815.28. Consumption of beer on wholesalers' premises unlawful. It shall be unlawful for any wholesaler to sell, serve or give away any beer to be consumed on such wholesaler's premises.

History: En. Sec. 19, Ch. 106, L. 1933.

2815.29. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons. A tax of one dollar (\$1.00) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933.

2815.30. Retailers' license—application and issuance—display required—check of alcoholic content by board. Any person desiring to possess and have for sale beer, under the provisions of this act, for the purpose of selling it at retail, shall first apply to the board for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the board shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the board shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the board returned. The board shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the beer kept by him for sale.

History: En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933.

2815.31. Sale of beer by retailer—consumption on premises. It shall be lawful for such retailer to sell and serve beer either on draught or in bottles to the public to be consumed on the premises of such retailer.

History: En. Sec. 29, Ch. 106, L. 1933.

2815.32. Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer and in quantities not to exceed five (5) gallons.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933.

2815.33. Purchase of beer by retailer. It shall be unlawful for such retailer to purchase or acquire beer from any one except a brewer or wholesaler licensed under the provisions of this act, or for any person, firm or corporation to sell or dispose of beer to any person who shall appear to be in an intoxicated or disorderly condition, or to allow or permit any intoxicated or disorderly person to come into, or remain in, or about his premises.

History: En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933.

2815.34. Club license—application and issuance—alcoholic content may be tested by board. Any club desiring to possess or have for sale beer under the provisions of this act shall make application to the board for a permit so to do, accompanied by the license fee herein prescribed. Upon

being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the board shall issue such license to such club, which license shall be at all times prominently displayed in the club premises. If the board shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned. The board shall have the right at any time to make an examination of the premises of such club and to check the alcoholic content of beer being kept or sold in such club.

History: En. Sec. 32, Ch. 106, L. 1933; amd. Sec. 12, Ch. 46, Ex. L. 1933.

2815.35. Special permits to sell beer—application and issuance—fee.

Any fair association or corporation maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto, shall in the discretion of the board be entitled to a special permit to sell beer to the patrons of such exhibition to be consumed within the exhibition enclosure.

The application of any such association or corporation shall describe the location of such enclosure wherein such exhibition is held, the nature of such exhibition, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such fair association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when exhibitions for which a fee is charged are being held upon such grounds and during the exhibition period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of ten dollars (\$10.00) per day for each day beer is to be sold, or sold but in no event less than the sum of twenty-five dollars (\$25.00), hereby fixed as the minimum fee for such permit.

History: En. Sec. 13, Ch. 46, Ex. L. 1933.

2815.36. Qualifications of retail licensee. That a retail license to sell beer shall be issued to any person, firm or corporation who shall be approved by the majority of the board, as a fit and proper person, firm or corporation to sell beer.

History: En. Sec. 14, Ch. 46, Ex. L. 1933.

2815.37. Limitations on issuance of club license. No club shall be granted a license to sell beer:

(a) If it is a proprietary club or operated for pecuniary gain.

(b) Unless such club was established as such club for at least one (1) year immediately prior to the date of its application for a license to sell beer.

History: En. Sec. 33, Ch. 106, L. 1933.

2815.38. Sale of beer under club license. It shall be lawful for such club to sell and serve beer either on draught or in bottles to club members to be consumed on the premises of such club.

History: En. Sec. 34, Ch. 106, L. 1933.

2815.39. Clubs to purchase from licensed brewer or wholesaler only. It shall be unlawful for any such club to purchase or acquire beer from anyone except a brewer or wholesaler, licensed under the provisions of this act.

History: En. Sec. 35, Ch. 106, L. 1933.

2815.40. Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under twenty-one years of age or disorderly persons. Any person maintaining or operating any railroad car or train as a common carrier for the transportation of passengers, desiring to sell beer under the provisions of this act, shall first apply to the board for a permit so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application or otherwise that the applicant is qualified under the provisions of this act, the board shall issue a license for the sale of beer by such person, which shall at all times be prominently displayed in the car, operated by the applicant, wherein beer or malt liquors are served. The board shall have the right at any time to make an inspection of the train or cars operated by any railway company in this state, to ascertain whether this act is being strictly complied with, and if not, the board is authorized and empowered to cancel such license, after which the sale of any beer or malt liquors by any such common carrier shall be unlawful and subject to the penalties herein prescribed. And it shall be unlawful for any such common carrier to sell beer or malt liquors to any person under the age of twenty-one (21) years or who may appear to be in an intoxicated or disorderly condition.

History: En. Sec. 36, Ch. 106, L. 1933.

2815.41. Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any such railroad train, as a common carrier, or its employes, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer, wholesaler or retailer duly licensed.

History: En. Sec. 37, Ch. 106, L. 1933.

2815.42. Qualifications of waiters to serve beer. No licensee under the provisions of this act shall employ or permit any person, either as a waiter or waitress, to serve beer to patrons, unless possessed of good moral character.

History: En. Sec. 40, Ch. 106, L. 1933.

2815.43. License to retailers outside city or town limits. The board, in its discretion, may issue a license to a retailer outside of the limits of cities, towns and villages.

History: En. Sec. 44, Ch. 106, L. 1933.

2815.44. Fees for licenses—expiration date—regulation by cities and towns. Each licensee, under the provisions of this act, shall pay an annual license fee as follows:

Each "brewer," seven hundred fifty dollars (\$750.00);

Each "wholesaler," three hundred dollars (\$300.00);

Each "retailer," two hundred dollars (\$200.00);

Each "vehicle," being a common carrier of passengers, twenty-five dollars (\$25.00); and

Each "club," fifty dollars (\$50.00).

All licenses issued in any year shall expire on the thirty-first day of December at midnight of such year. Provided, that a transfer of any such license may be made on application to the board of equalization. And provided further, that nothing in this act contained shall in any manner be so construed as to prohibit or prevent cities and incorporated towns from enacting ordinances for the enforcement of this act and to license and regulate places of business where beer is sold, notwithstanding the fact that the persons conducting such places have obtained a license from the board, the only restriction hereby imposed being that such regulatory license so imposed by any city or town shall be reasonable and not in excess of the amount imposed by the state.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933.

2815.45. Revocation or suspension of license. If any of the licensees herein described shall be convicted of any violation of any of the provisions of this act, or if the board shall find, upon such examination, that such licensee has violated any of the provisions of this act, the board may, in its discretion, and in addition to the penalties hereinbefore prescribed, revoke such license, or may suspend the same for a period of not more than three (3) months.

History: En. Sec. 46, Ch. 106, L. 1933.

2815.46. Appeal to district court in case of refusal to grant or on revocation or suspension of license. If the board shall refuse to grant any license provided for in this act to any applicant, or shall revoke or suspend any license previously granted by it, it shall notify such applicant or licensee as the case may be, in writing, by registered mail, to the address of such applicant or licensee, of its action, giving the reason therefor, and such applicant or licensee shall have the right of appeal to the district court of the county in which he shall reside from the action of the said board, by filing such notice with the clerk of the district court, and paying the filing fee required to commence suit or action in such district court within thirty (30) days after the order made and entered by the board. The trial shall be had before the district court upon the record as presented to the board, and upon which its decision was rendered, and there shall not be any additional evidence introduced or anything in the nature of a trial de novo.

History: En. Sec. 47, Ch. 106, L. 1933.

2815.47. Penalties for violations—jurisdiction. Any person who shall violate any of the provisions of this act for which no penalty has been specifically provided, shall be liable to imprisonment in the county jail for not more than six (6) months or to a fine of not more than five hundred dollars (\$500.00), or both; provided, however, that the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this act.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933.

2815.48. Common nuisance defined—misdemeanor—lien on premises—disposal of beer to minors. Any room, house, building, boat, vehicle, struc-

ture, or place where beer is manufactured, sold, or bartered in violation of this act, and all property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and be imprisoned not less than thirty (30) days nor more than six (6) months. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of beer contrary to the provisions of this act, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction. Any person whomsoever whether a licensee or not, who shall without the corporate limit of any city or town, permit minors to congregate and sell or give away to said minors beer or other liquors shall be deemed guilty of maintaining a nuisance and shall be subject to all the provisions of this section.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933.

2815.49. Action to enjoin nuisance—injunction—order of court—bond. An action to enjoin any nuisance defined in this act may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), payable to the state of Montana, and conditioned that beer will not thereafter be manufactured, sold or bartered therein or thereon,

and that he will pay all fines, costs, and damages that may be assessed for any violations of this act upon said property.

History: En. Sec. 48, Ch. 106, L. 1933; amd. by Sec. 16, Ch. 46, Ex. L. 1933.

2815.50. Revenue to be paid to state treasurer—audit of books—disposition of revenue. All fees, charges, taxes and penalties provided by this act, collected by or under authority of the board, together with all revenues received from other sources under this act, shall be paid into the state treasury, and constitute a special fund to be designated “Montana beer act fund,” which to the extent of ten per centum (10%) of the net amount of current revenues received and paid into the state treasury, shall be available for the payment of the expenses of the board in the administration of this act, and the state examiner shall quarterly audit the books of the board in order to determine that the amount of money received as shown by the books of the board correspond with the books of the state treasurer. Whenever the amount of money in the “Montana beer act fund” shall exceed ten thousand dollars (\$10,000.00) all in excess of the sum of five thousand dollars (\$5,000.00) shall be by the state treasurer distributed as follows: Ninety-five per cent (95%) thereof shall be transferred to the general fund of the state of Montana, and the remaining five (5%) shall be distributed to the relief fund to be administered by the Montana relief commission.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935.

2815.51. Brewers and wholesalers not to be interested in retailer financially. It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment or other property to any retail licensee, used or to be used in the dispensation of beer. No brewer or wholesaler shall advance, furnish money for or pay for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer as herein defined.

History: En. Sec. 18, Ch. 46, Ex. L. 1933.

2815.52. Sale of beer by state board of liquor control unlawful. The sale of beer by the state board of liquor control is hereby prohibited, save and except ale, porter and stout, containing more than three and two-tenths per cent (3.2%) of alcohol by weight.

History: En. Sec. 19, Ch. 46, Ex. L. 1933.

2815.53. Election to determine whether or not beer should be sold in county to be ordered upon application of one-third (1/3) of the voters of any county. Upon application by petition, signed by one-third (1/3) of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty (40) days after the reception of such petition, to determine whether or not the sale of beer as herein provided for shall be permitted within the limits of the county. No election, under this section must take place in any month in which the general elections are held. It

shall be the duty of the board of county commissioners to determine the sufficiency of the petitions presented from an examination of the roll of qualified electors within the county.

History: En. Sec. 50, Ch. 106, L. 1933.

2815.54. Notice of election. The notice of election must be published once a week for four (4) weeks in such newspapers of the county where the election is to be held as the board of county commissioners may think proper.

History: En. Sec. 51, Ch. 106, L. 1933.

2815.55. Ballots—what to contain. The county clerk must furnish the ballots to be used at such election, as provided in the general election laws, which ballots must contain the following words: "Sale of beer, yes"; "Sale of beer, no." And the elector in order to vote must mark an "X" opposite one (1) of the answers.

History: En. Sec. 52, Ch. 106, L. 1933.

2815.56. Election—how held. The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the general election laws of the state of Montana.

History: En. Sec. 53, Ch. 106, L. 1933.

2815.57. Effect when vote is against sale of beer. If a majority of the votes cast are against the sale of beer the board of county commissioners must publish the result once a week for four (4) weeks in the newspapers in which the notices of election were published, and from the date of the election no further licenses to vend beer in the county shall be issued by the board of equalization, and after the publication of notice proclaiming the result of the election as against the sale of beer, all licenses then existing shall be cancelled by the state board of equalization, and thereafter it shall be unlawful to sell any beer in any such county.

History: En. Sec. 54, Ch. 106, L. 1933.

2815.58. No election more than once in two (2) years. No election shall be held in the same county oftener than once in any two (2) years.

History: En. Sec. 55, Ch. 106, L. 1933.

2815.59. Election—how contested. Any election held under the provisions of this act may be contested in the same manner as other elections under the laws of this state.

History: En. Sec. 56, Ch. 106, L. 1933.

CHAPTER 255

STATE LIQUOR CONTROL ACT OF MONTANA

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2815.60. Citation of state liquor control act. This act may be cited as the "State Liquor Control Act of Montana."

History: En. Sec. 1, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.61. Definitions. The following words and phrases used in this act shall take the following interpretations:

(a) "Board" means the board created by this act under the name of "Montana Liquor Control Board";

(b) "Club" shall mean any association of individuals for purposes of mutual entertainment and convenience and shall include the premises occupied or used for any such purpose;

(c) "Club license" means a club license granted to a club to sell beer under section 2815.87, and "club licensee" means a club which has been granted a license under said section;

(d) "Dentist" means a person duly licensed to practice dentistry under the laws of the state of Montana;

(e) "Druggist" means a duly licensed pharmacist under the laws of the state of Montana;

(f) "State liquor store" means a state liquor store established under this act;

(g) "Hotel" shall mean any place where the public may for a consideration, obtain sleeping accommodation, with or without meals;

(h) "Interdicted person" means a person to whom the sale of liquor is prohibited by an order under this act;

(i) "Liquor" or "liquors" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight;

(j) "Municipality" means any city, town, village, hamlet, municipal district (exclusive of any hamlet situate therein), and includes the council of the municipality; and "municipal" shall have a like meaning;

(k) "Member of a club" means a person who, whether as a charter member or admitted in accordance with the by-laws or rules of a club, has become a member thereof, who maintains his membership by the payment of his regular periodic dues in the manner provided by such rules or by-laws and whose name and address are entered on the list of members supplied to the board at the time of the application for a club license under this act, or if admitted thereafter, within ten days after his admission;

(l) "Package" means any container or containers, or receptacle or receptacles used for holding liquor;

(m) "Permit" means a permit for the purchase of liquor issued under this act;

(n) "Physician" means a person duly licensed to practice medicine in the state of Montana;

(o) "Prescription" means a memorandum in the form prescribed by the regulations made under the authority of this act, signed by a physician, and given by him to a patient for the obtaining of liquor pursuant to this act for use for medicinal purposes;

(p) "Public place" includes any place, building, or conveyance to which the public has or is permitted to have access and any place of public resort;

(q) "Residence" means a building, or part of building, or tent, where a person resides but shall not include any part of a building which part is not actually and exclusively used as a private residence, nor any part of a hotel other than a private guest room, nor a club or any part thereof, nor any place from which there is access to a club or hotel except through a street or lane or other open and unobstructed means of access, nor any

portion of a building used in part for business purposes unless such portion is separated from the part used for business purposes by a wall or walls having no doors or other means of access opening into such part used for business purposes;

(r) "Regulations" means regulations made by the Montana liquor control board.

(s) "Sale" and "sell" include exchange, barter, and traffic; also include the selling or supplying or distributing, by any means whatsoever, of liquor or of any liquid known or described as beer or near-beer, or by any name whatever commonly used to describe malt or brewed liquor, by any partnership or by any society, association, or club, whether incorporated or unincorporated, and whether heretofore or hereafter formed or incorporated, to any partnership, society, association or club or to any member thereof;

(t) "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution and includes, among other things, brandy, rum, whisky and gin;

(u) "Vendor" means a person appointed as a vendor under this act;

(v) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits (grapes, apples, etc.); or other agricultural products containing sugar (honey, milk, etc.);

(w) "Malt liquor" means any beverage, other than beer, obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops in drinkable water.

History: En. Sec. 2, Ch. 105, L. 1933.

2815.62. Divisions of act. This act is divided into six parts. Part I relates to the creation of a board to administer this act and the powers and functions of the board. Part II relates to the establishment of state stores and the keeping and selling of liquors. Part III relates to the formation of "local option areas" and the holding of election therein. Part IV relates to prohibitions, interdiction, penalties and procedure on prosecution and on appeal. Part V relates to property acquired by the board, and the financing and accounting by the board and application of the profits. Part VI relates to general and miscellaneous matters.

History: En. Sec. 3, Ch. 105, L. 1933.

NOTE.—The parts referred to in the above section are as follows: Part I, section 2815.63 to section 2815.68 inclusive; part II, section 2815.69 to section 2815.95

inclusive; part III, section 2815.96 to section 2815.103 inclusive; part IV, section 2815.104 to section 2815.150; part V, section 2815.151 to section 2815.157 inclusive; part VI, section 2815.158 to section 2815.163 inclusive.

2815.63. Montana liquor control board, state board of examiners to be ex-officio. The state board of examiners, ex-officio, shall constitute the "Montana liquor control board," and such board shall have the powers and duties herein specified, and the administration of this act including the general control, management and supervision of all state liquor stores; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law.

History: En. Sec. 4, Ch. 105, L. 1933.

2815.64. Principal office of board. The principal office of the board shall be in the city of Helena.

History: En. Sec. 5, Ch. 105, L. 1933.

2815.65. Secretary of board—salary—bond. The board shall have authority to employ a secretary thereof, who shall not be a member of the board, and said secretary shall devote his whole time and attention to the business of the board and shall follow no other occupation whatever. The secretary of the board shall receive an annual salary of thirty-six hundred dollars (\$3600.00), and shall file a bond in the sum of \$10,000.00 (ten thousand dollars) conditioned upon the correct accounting of all moneys coming into his office.

History: En. Sec. 6, Ch. 105, L. 1933.

2815.66. Secretary's term of office. The secretary of the board shall hold his office during the pleasure of the board.

History: En. Sec. 7, Ch. 105, L. 1933.

2815.67. Functions, powers and duties of board. The board shall have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this act;

(b) To control the possession, sale and delivery of liquors in accordance with the provisions of this act;

(c) To determine the municipalities within which state liquor stores shall be established throughout the state, and the situation of the stores within every such municipality;

(d) To grant, refuse or cancel permits for the purchase of liquor;

(e) To lease, furnish and equip any building or land required for the operation of this act;

(f) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this act;

(g) To appoint vendors, and also every officer, inspector, clerk or other employee, required for the operation or carrying out of this act, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(h) To appoint officials to issue and grant permits under this act;

(i) To determine the nature, form and capacity of all packages to be used for containing liquor kept or sold under this act; provided that all spirituous and vinous liquors shall be purchased and sold only in bottled containers in the original packages, and not in barrels or bulk, it being the intent and purpose of this act to prevent the rectification or dilution of such liquors;

(j) To grant and issue licenses under and in pursuance to this act;

(k) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the board for the purpose of carrying into effect the provisions of this act, or the regulations made thereunder.

History: En. Sec. 8, Ch. 105, L. 1933.

2815.68. Regulations may be made by board—scope of regulations.

(1) The board may make such regulations, not inconsistent with this act, as to the board seem necessary, for carrying out the provisions of this act, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection 1 hereof, it is declared the power of the board to make regulations in the manner set out in that subsection shall extend to and include the following:

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the officers, clerks and servants of the board, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this act;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store.

(e) Prescribing, subject to this act, the days and hours during which state liquor stores and hotels, and clubs licensed to sell beer under this act shall be kept open for the sale of liquor;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this act;

(g) Prescribing an official seal and official labels and determining the manner in which such seal or label shall be attached to every package of liquor sold or sealed under this act, including the prescribing of different official seals or different official labels for different classes, varieties and brands of liquor;

(h) Prescribing forms to be used for the purpose of this act or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this act;

(i) Prescribing the nature of the proof to be furnished, and the conditions to be observed in the issuing of duplicate permits in lieu of those lost or destroyed;

(j) Prescribing the kinds and quantities of liquor which may be purchased under permits of any class, including the quantity which may be purchased at any one time or within any specified period of time;

(k) Prescribing the form of records of purchase of liquor by the holders of permits, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(l) Prescribing the manner of giving and serving notices required by this act or the regulations thereunder;

(m) Prescribing the duties of officials authorized to issue permits under this act;

(n) Prescribing the fees payable in respect of permits and licenses issued under this act for which no fees are prescribed in this act, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

(o) Prescribing, subject to the provisions of this act, any advertisement of the application, if required by the board and the conditions and qualifications necessary for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, and the number of licensed clubs in any municipality, and providing for the inspection of clubs;

(p) Prescribing, subject to the provisions of this act, the conditions and qualifications necessary for the obtaining of a beer license, and the books and records to be kept and the returns to be made by the licensees and the number of such licensed premises in any municipality and providing for the inspection of such licensed premises;

(q) Specifying and describing the place and the manner in which liquor may be lawfully kept or stored;

(r) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this act, and the time and periods when, and the manner, methods and means by which liquor, under this act, may be lawfully conveyed or carried;

(s) Governing the conduct, management and equipment of any premises licensed to sell beer under this act;

(t) Subject to this act, to make regulations respecting the sale and consumption of beer in a club, holding a club license;

(u) Providing for the imposition and collection of the tax to be collected or levied under section 2815.101, and making regulations respecting returns to be made by a brewer, and respecting the accounting and payment, by a brewer to the board, of the tax to be collected by him under said section 2815.101.

(3) Whenever it is provided in this act that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the board, subject to the restrictions set out in subsection 1 hereof, shall have the power to make regulations respecting such act, matter or thing.

History: En. Sec. 9, Ch. 105, L. 1933.

2815.69. State liquor stores—establishment—hours—kinds and prices of liquors. The board shall establish and maintain at county seats stores to be known as “state liquor stores” for the sale of liquor in accordance with the provisions of this act, and the regulations made thereunder, and the board may from time to time fix the prices at which the various classes, varieties and brands of liquor may be sold, which prices shall be the same at all such state stores. Such state liquor stores shall be and remain open from the hour of 12:00 o’clock noon until the hour of 9:00 o’clock in the evening each and every day, save and except that they shall be closed for the transaction of business on Sundays, legal holidays and election days.

History: En. Sec. 10, Ch. 105, L. 1933.

2815.70. Vendor—appointment—duties. The sale of liquor at each state liquor store shall be conducted by a person appointed under this act to be known as a “vendor,” who shall, under the directions of the board, be responsible for the carrying out of this act, and the regulations made

thereunder, so far as they relate to the conduct of such store and the sale of liquor thereat.

History: En. Sec. 11, Ch. 105, L. 1933.

2815.71. Provisions concerning sale of liquor and beer by vendors.

(1) A vendor may sell to any person, who is the holder of a subsisting permit, such liquor as that person is entitled to purchase under such permit, in conformity with the provisions of this act and the regulations made thereunder.

(2) Before the vendor shall make delivery of any liquor, other than beer, sold pursuant to this section, he shall—

(a) have first received an order in writing, dated and signed by the purchaser, setting out the number of his permit and the kind and quantity of the liquor ordered; and

(b) have received from the purchaser his permit and shall have endorsed thereon the kind and quantity of the liquor sold and the date of sale; and

(c) have been paid the purchase price in cash.

(3) A vendor may, in accordance with this act, and the regulations made thereunder, sell and deliver beer to any person who is the holder of a subsisting permit entitling him to purchase beer under this act, and to a licensee who is the holder of a subsisting license under this act to keep and sell beer; provided that no delivery of beer sold under the provisions of this section shall take place until the purchaser has paid for the same in the manner prescribed in the regulations under this act.

History: En. Sec. 12, Ch. 105, L. 1933.

2815.72. Sale by vendor on physician's prescription. A vendor may sell liquor to any person upon the prescription of a physician given pursuant to this act, but no more than one sale and one delivery shall be made on any one prescription.

History: En. Sec. 13, Ch. 105, L. 1933.

2815.73. Containers to be sealed with official seal—opening package on liquor store premises forbidden. No spirits or wine shall be sold to any purchaser, except in a package, sealed with the official seal prescribed by this act, which package shall not be opened on the premises of a state store.

History: En. Sec. 14, Ch. 105, L. 1933.

2815.74. Liquor not to be consumed on premises of state store. No officer, clerk or servant of the board, employed in the state store, shall allow any liquor to be consumed on the premises of a state store, nor shall any person consume any liquor on such premises.

History: En. Sec. 15, Ch. 105, L. 1933.

2815.75. Time for sale of liquor from state stores. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor—

(a) After the hour of eight o'clock in the afternoon of any day;

(b) On any holiday;

(c) On any day on which polling takes place at any national or state election held in the electoral district in which the store is situated;

(d) On any day on which polling takes place at any municipal election held in the municipality in which the store is situated;

(e) During such other period and on such other days as the board may direct.

History: En. Sec. 16, Ch. 105, L. 1933.

2815.76. Conveyance of liquors—opening liquor during transit forbidden. It shall be lawful to carry or convey liquor to any state store, and to and from any warehouse or depot established by the board for the purposes of this act, and when permitted so to do by this act and the regulations made thereunder, and in accordance therewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a state store, or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place to which the same may be lawfully delivered under this act, and the regulations made thereunder;

Provided that no such common carrier or any other person, shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink or use, or allow to be drunk or used, any liquor therefrom, while being so carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933.

2815.77. Permits for residents and temporary residents—special permits—fees. (1) There shall be two classes of permits under this act:

(a) Individual permits;

(b) Special permits.

(2) Upon application in the prescribed form being made to the board, or to any official authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the board, or such official being satisfied that the applicant is entitled to a permit for the purchase of liquor under this act, the board or such official shall issue to the applicant a permit of the class applied for, as follows:

(a) An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one years, who has resided in the state, for the period of at least one month immediately preceding the date of his making the application, and who is not disqualified under this act, entitling the applicant to purchase liquor for beverage, medicinal or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this act, and the regulations made thereunder;

(b) An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one years, who is temporarily resident or sojourning in the state, and who is not disqualified under this act, entitling the applicant during a period not exceeding one month to purchase liquor for beverage, medicinal, or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this act and the regulations made thereunder.

(c) A "special permit" in the prescribed form may be granted to a druggist, physician, dentist, or veterinary, or to a person engaged within the state in mechanical or manufacturing business, or in scientific pursuits, requiring liquor for use therein, entitling the applicant to purchase liquor

for the purpose named in such "special permit," and in accordance with the terms and provisions of such "special permit" and in accordance with the provisions of this act, and the regulations made thereunder;

(d) A "special permit" in the prescribed form may be granted to a minister of the gospel, entitling the applicant to purchase wine for sacramental purposes only in accordance with the terms and provisions of such "special permit";

(e) A "special permit" in the prescribed form may be granted, when authorized by the regulations, entitling the applicant to purchase liquor for the purpose named in the permit and in accordance with the terms and provisions of such permit, and of this act, and the regulations made thereunder.

(3) (a) For an individual permit under clause (a) of subsection 2 hereof—

Entitling holder to purchase spirits, wine, beer and malt liquor, the fee shall be two dollars;

Entitling holder to purchase beer only, the fee shall be one dollar;

Entitling holder to make a single purchase, whether of spirits, wine, beer or malt liquor, the fee shall be fifty cents;

(b) For an individual permit under clause (b) of subsection 2 hereof—

Entitling holder to purchase spirits, wine, beer or malt liquor, the fee shall be one dollar;

Entitling holder to make a single purchase whether of spirits, wine, beer or malt liquor, the fee shall be fifty cents;

(c) The fees for a "special permit" under clauses (c), (d) and (e) of subsection 2 hereof shall be fixed and determined by the regulations made hereunder.

(4) No one, who has been convicted of keeping, frequenting or being an inmate of a disorderly house, shall be entitled to a permit until after the expiration of one year from the date of such conviction.

(5) Notwithstanding any other provisions of this act, the board may in its discretion cancel any subsisting permit or refuse or direct any official authorized to issue permits to refuse to issue a permit to any person and no official so directed shall issue any such permit.

History: En. Sec. 18, Ch. 105, L. 1933.

2815.78. Expiration of permits. Unless sooner cancelled, every permit shall expire at midnight on the thirty-first day of December of the year in respect to which the permit is issued, except in the case of—

(a) Special permits issued under clause (e) of subsection 2 of section 2815.77, which shall expire in accordance with the terms contained therein;

(b) A permit which, according to its terms, sooner expires.

History: En. Sec. 19, Ch. 105, L. 1933.

2815.79. Permits not transferable. Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

History: En. Sec. 20, Ch. 105, L. 1933.

2815.80. Signature of applicant for permits required. No permit shall be delivered to the applicant, until he has, in the presence of some person

duly authorized by the board, or in the presence of the official to whom the application is made, written his signature thereon in the manner prescribed by the regulations for the purposes of his future identification as the holder thereof, and the signature has been attested by a member of the board, or other official authorized to issue the same.

History: En. Sec. 21, Ch. 105, L. 1933.

2815.81. Persons limited to one permit—replacing lost permits. No person, who is the holder of an unexpired individual permit under this act, shall make application for or be entitled to hold any other individual permit whether of the same or another class; provided, however, that the holder of a subsisting and unexpired individual permit may, without any claim to, or for rebate, return such permit to the board or official authorized to issue permits and then be entitled to make application for a permit under this act, and any person whose permit has been lost or destroyed may apply to the board or other official by whom the permit was issued, and upon proof of the loss or destruction of the permit and subject to the conditions contained in the regulations may obtain a duplicate permit in lieu of the permit so lost or destroyed, for which duplicate permit a fee of fifty cents shall be paid.

History: En. Sec. 22, Ch. 105, L. 1933.

2815.82. Consumption of liquor—residence becomes public place, when—effect of change of ownership of residence declared public place. (1) Liquor purchased by any person pursuant to a permit held by him may be kept, had, given, and consumed, only in the residence in which he resides, except as otherwise provided by this act and the regulations made thereunder.

(2) If the occupant of a residence or of any part thereof is convicted of keeping a disorderly house or of an offense against any of the provisions of this act committed in or in respect of such residence or in respect of any liquor kept therein or removed therefrom, the same shall cease to be a residence within the meaning of this act for a period of one year after the date of such conviction, and shall for such period be deemed to be a public place for the purposes of this act:

Provided that the board may, when satisfied of a bona fide change of ownership or occupation of such premises, or when it is desirable to do so, declare such premises to be a residence and may grant a certificate to such effect to the owner or occupant of such premises and such premises shall from the date of the granting of such certificate signed by the chairman of the board, be a residence and cease to be a public place within the meaning of this act.

History: En. Sec. 23, Ch. 105, L. 1933.

2815.83. Suspension or cancellation of permit, grounds for—justice may suspend permit. (1) Where the holder of any permit issued under this act violates any of the provisions of this act, or any regulations made thereunder, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact, or existence of such violation, interdiction or disqualification, and in its discre-

tion, with or without any hearing, may, by writing under the hand of any member of the board, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit.

(2) The justice before whom any holder of a permit issued under this act is convicted of a violation of any provision of this act, or of the regulations made thereunder may cancel the permit or suspend the same for a period not exceeding one month, and thereupon the justice shall forthwith notify the holder and the board of the suspension or cancellation of the permit.

History: En. Sec. 24, Ch. 105, L. 1933.

2815.84. Permit holder to deliver permit on notice of suspension—power and duty of board. Upon receipt of notice of the suspension of his permit, the holder of the permit shall forthwith deliver up the permit to the board, and if the holder of a permit, which has been suspended, fails or neglects to deliver the same to the board, in accordance with the regulations made hereunder, the board shall forthwith cancel the same. Where the permit has been suspended the board shall return the permit to the holder at the expiration or determination of the period of suspension. Where the permit has been cancelled the board shall notify all vendors and such other persons as may be provided by the regulations made under this act, of the cancellation of the permit, and no permit shall be issued to the person whose permit is cancelled under this act within the period of one year from the date of such cancellation.

Provided, however, that the board may direct the issue of a permit within said period of one year, if the person whose permit has been so cancelled has not been convicted of any offense under this act.

History: En. Sec. 25, Ch. 105, L. 1933.

2815.85. Vendor to retain permits presented by unauthorized person—exception in case of lost permit. Where a permit is produced at a state store by a person who is not the holder of such permit, or where any permit is suspended or cancelled, or a permit, a duplicate of which has been issued, is produced at a state store, the vendor shall retain such permit in his custody and shall forthwith notify the board of the fact of its retention, and the board, unless such permit has been cancelled, may forthwith cancel the same:

Provided nevertheless that the proper holder of any lost subsisting permit which may be improperly produced as aforesaid may, upon satisfactory proof to the board that he was not privy to such improper use, obtain a return of such permit.

History: En. Sec. 26, Ch. 105, L. 1933.

2815.86. Issuance of permits to certain persons forbidden. No permit shall be issued under this act to any person to whom the sale of intoxicants is prohibited under the provisions of any act of the United States of America, or of the state of Montana, nor except under clause (e) of subsection (2) of section 2815.77, to any corporation, association, society or partnership.

History: En. Sec. 27, Ch. 105, L. 1933.

2815.87. Club licenses—regulations—qualifications of applicant—cancellation—expiration—posting required. (1) Upon application in the pre-

scribed form and accompanied by the prescribed fee, the board may, in accordance with this act and the regulations made thereunder, grant a club license in respect of any premises kept or operated by a club, and specified in the license, entitling the club to purchase beer from a vendor or brewer licensed to sell beer under this act, and to keep on the premises such beer, and subject to the provisions of this act and the regulations made thereunder to sell the same to members of the club by the glass or open bottle, for consumption on the club premises.

(2) No club shall be granted a license to sell beer—

(a) If it is a proprietary club, or operated for pecuniary gain;

(b) Unless such club was in operation as such on the first day of January, 1933, or, which being hereafter formed, was in continuous operation as such a club for at least one year immediately prior to the date of its application for a license to sell beer;

(c) Unless the club premises be constructed, equipped, conducted, managed and operated to the satisfaction of the board and in accordance with this act and the regulations made thereunder;

(d) Unless such club at least one month prior to the date of application has filed with the board notice of its intention to make such application accompanied by a description of the premises occupied and proposed to be occupied by such club, and complies with any regulations made from time to time by the board;

(3) Every club license shall be issued in the name of the applicant club, and no club license shall be transferable, nor shall the holder of a club license allow any other club or person to use the license.

(4) For the purpose of considering an application for a club license, the board may cause an inspection of the club premises to be made, and may enquire into all matters in connection with the constitution and operation of the club. The board may, in its discretion, grant or refuse the license applied for; and may from time to time in the exercise of like discretion, with or without any hearing, or assigning any reason therefor, suspend or cancel any club license, and all rights of the club to keep or sell beer thereunder shall be suspended or determined as the case may be.

(5) Upon receipt of notice of the suspension or cancellation of a club license, the licensee club will forthwith deliver upon the license to the board, and in the case of suspension, if the said club fails or neglects to deliver upon the license in accordance with the regulations made hereunder, the board may forthwith cancel the same. Where the license has been suspended only, the board may return the license to the licensee at the expiration or determination of the period of suspension, and the board shall notify all vendors in the municipality where the club has its premises, and such other persons as may be provided in the regulations made hereunder, of the suspension or cancellation of such club license.

(6) Unless sooner cancelled, every club license issued by the board shall expire at midnight on the thirty-first day of December, in the year in respect of which the license is issued, but a club license shall become void and determined if and when the club, to which it was issued, ceases

to carry on operations or ceases to be qualified as a club within the meaning of this act and the regulations made thereunder.

(7) Every club license issued under this section shall be subject to all conditions and restrictions imposed by this act, or by the regulations made thereunder.

(8) Every licensed club shall post and keep posted its club license in a prominent position on the club premises.

(9) The premises of every club which does not hold a valid and subsisting club license under this section shall be deemed to be a public place within the meaning of this act.

History: En. Sec. 28, Ch. 105, L. 1933.

2815.88. Druggist allowed liquor under permit—sale of liquor by druggist, when authorized. Any druggist may have in his possession alcohol purchased by him under a special permit pursuant to this act; such alcohol to be used solely in connection with the business of the druggist in compounding medicines or as a solvent or preservative:

Provided that in a municipality where there is no state liquor store a druggist may keep for sale and may sell for strictly medicinal purposes liquor purchased by him under a special permit pursuant to this act, but no sale of liquor shall be made by such last mentioned druggist except upon a bona fide prescription signed by a physician and no more than one sale and one delivery shall be made on any one prescription.

History: En. Sec. 29, Ch. 105, L. 1933.

2815.89. Restrictions concerning druggists. Except as authorized or permitted by this act, or by the regulations made thereunder, and in accordance therewith, nothing in this act, or in any act, shall be construed as authorizing or permitting any druggist to have or keep for sale, or by himself, or his clerk, servant or agent, to sell, any liquor.

History: En. Sec. 30, Ch. 105, L. 1933.

2815.90. Physician allowed liquor—restrictions—violations. (1) Any physician who deems liquor necessary for the health of a patient of his whom he has seen or visited professionally may give to such patient a prescription therefor in the prescribed form, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician shall administer only such liquor as was purchased by him under special permit pursuant to this act, and may charge for the liquor so administered; but no prescription shall be given nor shall liquor be administered by a physician except to a bona fide patient in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary.

(2) Every physician who gives any prescription or administers any liquor in evasion or violation of this act, or who gives to or writes for any person a prescription for or including liquor for purpose of enabling or assisting any person to evade any of the provisions of this act, or for the purpose of enabling or assisting any person to obtain liquor to be used as a beverage, or to be sold or disposed of in any manner in violation of the provisions of this act, shall be guilty of an offense against this act.

History: En. Sec. 31, Ch. 105, L. 1933.

2815.91. Dentist allowed liquor—restrictions—violations. Any dentist who deems it necessary that any patient being then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor purchased by him under special permit pursuant to this act, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to a bona fide patient in case of actual need, and every dentist who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 32, Ch. 105, L. 1933.

2815.92. Liquor allowed veterinary—restrictions—violations. Any veterinary who deems it necessary may in the course of his practice administer or cause to be administered liquor to any dumb animal, and for that purpose the veterinary shall administer or cause to be administered liquor purchased by him under special permit pursuant to this act, and may charge for the liquor so administered or caused to be administered; but no veterinary shall himself consume, nor shall he give to or permit any person to consume as a beverage any liquor so purchased, and every veterinary who evades or violates or suffers or permits any evasion of this section shall be guilty of an offense against this act.

History: En. Sec. 33, Ch. 105, L. 1933.

2815.93. Hospitals and sanitariums—restrictions—violations. Any person in charge of an institution regularly conducted as a hospital or sanitorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this act for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need, and every person in charge of an institution who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 34, Ch. 105, L. 1933.

2815.94. Application of act. (1) Nothing in this act shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

(2) Nothing in this act shall prevent—

(a) The sale of liquor by any person to the board;

(b) The purchase, importation and sale of liquor by the board for the purposes of and in accordance with this act.

History: En. Sec. 35, Ch. 105, L. 1933.

2815.95. Preparations not subject to act. (1) Subject to the provisions of this section, nothing in this act shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption—

(a) of any extract, essence or tincture or other preparation containing alcohol, which is prepared according to a formula of the United States Pharmacopoeia, or according to a formula approved of by the board; or

(b) of any proprietary or patent medicine prepared according to a formula approved of by the board.

(2) The board, if of opinion that any such proprietary or patent medicine, extract, essence, tincture or preparation which contains alcohol, or any other preparation of a solid, semi-solid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the board to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

(3) The board shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this act.

History: En. Sec. 36, Ch. 105, L. 1933.

2815.96. Local option law—petition—time for election. Election to be ordered upon application of one-third of the voters of any county. Upon application by petition, signed by one-third of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty days after the reception of such petition, to determine whether or not any spirituous or malt liquors, wine, or cider, or any intoxicating liquors or drinks may be sold within the limits of the county. No election, under this section must take place in any month in which general elections are held. The board of county commissioners must determine on the sufficiency of the petition presented from the roll of registered electors of the territory affected.

History: En. Sec. 37, Ch. 105, L. 1933.

2815.97. Notice of election. The notice of election must be published once a week for four weeks in such newspapers of the county where the election is to be held as the board of county commissioners may think proper.

History: En. Sec. 38, Ch. 105, L. 1933.

2815.98. Ballots, what to contain. The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of intoxicating liquors, yes"; "Sale of intoxicating liquors, no"; and the elector in order to vote must mark an X opposite one of the answers.

History: En. Sec. 39, Ch. 105, L. 1933.

2815.99. Election, how held. The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state.

History: En. Sec. 40, Ch. 105, L. 1933.

2815.100. Dealing in intoxicating liquors prohibited if majority of vote against sale. If a majority of the votes cast are "Sale of intoxicating liquors, no," the board of county commissioners must publish the result once a week for four weeks in the paper in which the notice of the election was given. The provisions of this act shall take effect at the expiration of the time of the publication of the notice, and thereupon all existing licenses shall be cancelled.

History: En. Sec. 41, Ch. 105, L. 1933.

2815.101. No election more than once in two years. No election must be held in the same county oftener than once in two years thereafter.

History: En. Sec. 42, Ch. 105, L. 1933.

2815.102. Sale of liquors prohibited. If a majority of the votes at the election are, "Sale of intoxicating liquors, no," it shall not be lawful for any person within the county in which the vote was taken, to sell, either directly or indirectly, or give away, to induce trade at any place of business, or furnish to any person, any alcoholic, spirituous, malt, or intoxicating liquors.

History: En. Sec. 43, Ch. 105, L. 1933.

2815.103. Election, how contested. Any election held under the provisions of this act may be contested in the same manner as provided by the general laws.

History: En. Sec. 44, Ch. 105, L. 1933.

2815.104. Sale of liquor unlawful, when--foreign substance in liquor forbidden--possession of liquor, when unlawful. (1) Except as provided by this act, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have, keep or sell any beer, or malt liquor, to which has been added any foreign substance.

(3) No person shall have or keep any liquor within the state which has not been purchased from a state vendor of the Montana Liquor Control Board or from a druggist authorized to sell the same; provided, however, that nothing in this act shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed one (1) quart of alcoholic liquor, which liquor shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than one (1) quart of intoxicating liquor which shall not have been purchased

from a state liquor store. This subsection shall not apply to the board or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this act.

(4) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the board, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee.

History: En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.105. Liquor dispensed only in accordance with act. No brewer, distiller, or manufacturer of liquor shall, within the state, by himself, his clerk, servant or agent, give to any person any liquor, except as may be permitted by and in accordance with the regulations made under this act.

History: En. Sec. 46, Ch. 105, L. 1933.

2815.106. Place and time of selling liquor. No vendor, and no person acting as the clerk or servant of or in any capacity for any vendor, shall sell liquor in any other place or at any other time or otherwise than as authorized by this act and the regulations.

History: En. Sec. 47, Ch. 105, L. 1933.

2815.107. Board members not to be interested in liquor sales—unlawful to give board or board to receive gift, commission or remuneration. (1) No member or employee of the board shall be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the board or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or board in pursuance of this act.

(3) No person selling or offering for sale to, or purchasing liquor from, the state or the board, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the board or to any employee of the state, or to anyone on behalf of such member or employee.

History: En. Sec. 48, Ch. 105, L. 1933.

2815.108. Transfer of liquor except as provided by act unlawful. Except as provided in this act, no person shall, within the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the

time of the transfer of any property, take or accept from any other person any liquor.

History: En. Sec. 49, Ch. 105, L. 1933.

2815.109. Cashing of pay checks at liquor dispensaries unlawful. No check or time check or other evidence of indebtedness given in payment of wages earned for labor shall be cashed or negotiated in any place licensed for the sale of liquor under the provisions of this act.

History: En. Sec. 50, Ch. 105, L. 1933.

2815.110. Consumption of liquor on druggists' premises prohibited. No person, within the state of Montana, shall consume any liquor on any premises where liquor is kept for sale by a druggist, nor shall any druggist permit any liquor to be consumed on such premises.

History: En. Sec. 51, Ch. 105, L. 1933.

2815.111. Liquor to be acquired under state permit and seal only—exceptions. Except in the case of wine used for sacramental purposes, and except in the case of beer purchased and consumed in accordance with this act and regulations no person shall consume liquor within the state unless the same has been acquired under the authority of a permit issued under this act, and unless the package in which the liquor is contained and from which it is taken for consumption has, while containing that liquor, been sealed with the official seal prescribed under this act, and the regulations made thereunder:

Provided that the foregoing proviso relating to the official seal prescribed under the act shall not apply to "malt liquor" as defined in the act.

History: En. Sec. 52, Ch. 105, L. 1933.

2815.112. Liquor container must have been sealed with official seal—powers and duties of peace officers. (1) Except in the case of—

(a) liquor imported by the state, or by the board; or

(b) liquor had and kept by a person, and in a place and manner referred to in section 2815.94; or

(c) beer and malt liquor, lawfully had or kept under this act; or

(d) any liquor kept for sale by a druggist under section 2815.88—

no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this act.

(2) Any inspector or peace officer who finds liquor, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this act, may, without warrant, forthwith seize and remove the same and the packages in which the liquor is kept, and upon conviction of the person for a violation of any provision of this section the liquor and all packages containing the same shall, in addition to any other penalty prescribed by this act, ipso facto be forfeited to the state of Montana.

History: En. Sec. 53, Ch. 105, L. 1933.

2815.113. Persons not to consume liquor or be intoxicated in public places. (1) Except in the case of liquor purchased and consumed in ac-

cordance with the beer license or a special permit for a purpose permitting its consumption in a public place, no person shall consume liquor in a public place.

(2) No person shall be in an intoxicated condition in a public place.

History: En. Sec. 54, Ch. 105, L. 1933.

2815.114. Sales to intoxicated persons prohibited. No vendor, beer licensee, or club licensee, nor any employee of a vendor, beer licensee, or club licensee, shall sell any liquor, or permit any liquor to be sold, to any person apparently under the influence of liquor.

History: En. Sec. 55, Ch. 105, L. 1933.

2815.115. Age limit for sale of liquor. Except in the case of liquor given to a person under the age of twenty-one years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of twenty-one years, or permit any person under that age to consume liquor.

History: En. Sec. 56, Ch. 105, L. 1933.

2815.116. Securing liquor for person whose permit suspended or cancelled forbidden. Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this act, or of beer sold on premises licensed for the sale of beer under the provisions of this act, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to any person whose permit is suspended or has been cancelled.

History: En. Sec. 57, Ch. 105, L. 1933.

2815.117. Procuring liquor for interdicted person forbidden. Except in the case of liquor supplied to an interdicted person upon the prescription of a physician, or administered to him by a physician or dentist pursuant to this act, no person shall procure for or sell, or give to any interdicted person, any liquor, nor directly or indirectly assist in procuring or supplying any liquor to any interdicted person.

History: En. Sec. 58, Ch. 105, L. 1933.

2815.118. Interdicted persons—permits not to be issued to—presence on liquor store or beer licensee's premises forbidden. No permit shall be issued to any interdicted person, and every interdicted person who makes application for a permit, or who enters or is found upon the premises of any state liquor store, or the premises for which a beer license has been granted, shall be guilty of an offense against this act.

History: En. Sec. 59, Ch. 105, L. 1933.

2815.119. When application for permit may be made after cancellation. No person whose permit has been cancelled shall, within a period of twelve months, after the date of such cancellation, make application for another permit under this act.

History: En. Sec. 60, Ch. 105, L. 1933.

2815.120. Purchase of liquor under unauthorized permit unlawful—application for permit under assumed name unlawful. (1) No person shall

purchase or attempt to purchase liquor under a permit which is suspended, or which has been cancelled, or of which he is not the holder.

(2) No person shall apply in any name except his own for the issue to him of a permit authorizing the purchase of liquor or beer.

History: En. Sec. 61, Ch. 105, L. 1933.

2815.121. Drunkenness not to be permitted on premises—allowing consumption of liquor by drunk on premises unlawful—giving liquor to drunk unlawful. No person shall—

(a) Permit drunkenness to take place in any house or on any premises of which he is owner, tenant, or occupant; or

(b) Permit or suffer any person apparently under the influence of liquor to consume any liquor in any house or on any premises of which the first-named person is owner, tenant, or occupant; or

(c) Give any liquor to any person apparently under the influence of liquor.

History: En. Sec. 62, Ch. 105, L. 1933.

2815.122. Person not holding permit not to possess liquor—liquor allowed permit holder. (1) Except as authorized by this act, no person, not holding a permit under this act, entitling him so to do, shall have any liquor in his possession within the state.

(2) A holder of an individual permit may have in his possession and consume in his residence, or in a private guest room occupied by him in a hotel only the liquor acquired by him under his individual permit.

History: En. Sec. 63, Ch. 105, L. 1933.

2815.123. Liquor in hotels—restrictions on. Except in the case of beer kept or consumed in premises for which a beer license has been granted, under the law, and which form a part of a hotel, and except in the case of liquor kept and consumed pursuant to a special permit granted under the provisions of clause (e) of subsection 2 of section 2815.77, no person—

(a) shall keep or consume liquor in any part of a hotel other than a private guest room;

(b) shall keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room and has baggage and personal effects belonging to him in the hotel:

Provided that there shall not be kept or had in any such room a greater quantity of liquor than one person is entitled to acquire at one time under an individual permit.

History: En. Sec. 64, Ch. 105, L. 1933.

2815.124. Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions. No person within the state shall—

(1) canvass for, receive, take or solicit orders for the purchase or sale of any spirits or wines or act as agent or intermediary for the sale or purchase of any spirits or wines or hold out himself as such agent or intermediary;

(1a) canvass for or solicit orders for the purchase or sale of any beer or malt liquor excepting in the case of beer proposed to be sold to beer licensees, club licensees duly authorized to sell beer under the provisions of this act;

(2) exhibit or display, or permit to be exhibited or displayed, any sign or poster containing the words "bar," "barroom," "saloon," "tavern," "wines," "spirits," or "liquors" or words of like import;

(3) exhibit or display, or permit to be exhibited or displayed, any advertisement or notice of or concerning liquor by an electric or illuminated sign, contrivance or device or on any hoarding signboard, billboard or other like place in public view or by any of the means aforesaid, advertise any liquor. This subsection shall not apply to any advertisement respecting beer or malt liquor on a brewery or premises where beer or malt liquor may be lawfully stored or kept by a brewer under the law; provided that such last mentioned advertisement has first been permitted in writing by the board and then subject to the directions of the board;

(4) exhibit, publish, or display, or permit to be exhibited, published or displayed, any other advertisement, or form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the same may be had, obtained or purchased, unless permitted so to do by the regulations, and then only in accordance with such regulations;

(5) This section shall not apply—

(a) to the board, nor to any act of the board, nor to any state liquor store; nor

(b) to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of his employment as such agent, operator or employee.

History: En. Sec. 65, Ch. 105, L. 1933.

2815.125. Sale of material branded as liquor forbidden, when. No person not expressly authorized by this act to deal in liquor, shall within the state keep for sale, offer for sale, or sell anything which is labeled or branded with the name of any kind of liquor, whether the same contains any liquor or not.

History: En. Sec. 66, Ch. 105, L. 1933.

2815.126. Interdiction—order of—effect—disposal of liquor of interdicted person. (1) Where it is made to appear to the satisfaction of any court that any person, resident or sojourning within the state, by excessive drinking of liquor, misspends, wastes, or lessens his estate, or injures his health, or endangers or interrupts the peace and happiness of his family, the court may make an order of interdiction directing the cancellation of any permit held by that person, and prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the board.

(2) Every interdicted person keeping or having in his possession or under his control any liquor shall be guilty of an offense against this act, and, on summary conviction thereof, the court making the conviction may

in and by the conviction declare the liquor and all packages in which the same is contained to be forfeited to the state of Montana:

Provided that on the making of an order for interdiction the interdicted person may forthwith deliver to the board all liquor then in his possession or under his control to be kept for him by the board until the order of interdiction is revoked or set aside, or to be purchased by the board at a price to be fixed by it.

History: En. Sec. 67, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.127. Filing of order of interdiction—cancellation of permit. Upon receipt of the order of interdiction, the board shall cancel any permit held by the interdicted person, and shall notify the interdicted person and all vendors, and such other persons as may be provided by the regulations, of the cancellation of the permit, and of the order of interdiction so made and filed prohibiting the sale of liquor to the interdicted person.

History: En. Sec. 68, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.128. Revocation of order of interdiction—restoration of rights. The court by whom an order of interdiction is made under this act, upon being satisfied that the justice of the case so requires, may revoke the order of interdiction by an order filed with the board; and upon the filing of the order of revocation, the interdicted person shall be restored to all his rights under this act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations.

History: En. Sec. 69, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.129. Application and setting aside order of interdiction—restoration of rights—notice of application. (1) Upon the application to the judge of any district court by any person in respect of whom an order of interdiction has been made under this act, and upon it being made to appear to the satisfaction of the judge that the circumstances of the case did not warrant the making of the order of interdiction, or upon proof that the interdicted person has refrained from drunkenness for at least twelve months immediately preceding the application, the judge may by order set aside the order of interdiction filed with the board, and the interdicted person shall be restored to all his rights under this act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations.

(2) The applicant shall, at least ten clear days before the application, give notice thereof to the board, in writing, served upon the board, and to such other persons as the judge may direct.

History: En. Sec. 70, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.130. Penalty for violations of act. Every person who violates any provision of this act or the regulations made hereunder, shall be guilty of a misdemeanor unless other punishment is herein prescribed.

History: En. Sec. 71, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.131. Officer or agent of corporation deemed party to offense, when. Where an offense against this act is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed, and shall be personally liable to the penalties prescribed for the offense as a principal offender; but nothing in this section shall relieve the corporation or the person who actually committed the offense from liability therefor.

History: En. Sec. 72, Ch. 105, L. 1933.

2815.132. Occupant of premises deemed party to offense, when. Upon proof of the fact that an offense against this act has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed, or by any person who is suffered by the occupant, to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed, and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant; but nothing in this section shall relieve the person actually committing the offense from liability therefor.

History: En. Sec. 73, Ch. 105, L. 1933.

2815.133. Search warrants—issuance. (1) Upon information on oath by any inspector appointed under this act or by any peace officer showing reasonable cause to believe that liquor is unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any justice by warrant under his hand to authorize and empower the inspector or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain liquor.

History: En. Sec. 74, Ch. 105, L. 1933.

2815.134. Seizure of liquor and conveyance—forfeiture of conveyance and liquor to state. Whenever an inspector or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description liquor which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this act, he may forthwith seize the liquor and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe

or conveyance in which such liquor is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such liquors contrary to any of the provisions of this act in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the liquor or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana.

History: En. Sec. 75, Ch. 105, L. 1933.

2815.135. Force may be used in seizure of liquor, when—retention of seized liquor—forfeiture—hearing. (1) Where liquor is found by any inspector or peace officer on any premises or in any place in such quantities as to satisfy the inspector or peace officer that such liquor is being had or kept contrary to any of the provisions of this act, it shall be lawful for the inspector or peace officer to forthwith seize and remove, by force if necessary, any liquor so found, and the packages in which the liquor was had or kept.

(2) Where liquor has been seized by an inspector or peace officer under any of the provisions of this act, under such circumstances that the inspector or peace officer is satisfied that such liquor was had or kept contrary to any of the provisions of this act, he shall, under the provisions of this section, retain the same and the packages in which the same was had or kept.

(3) If within thirty days from the date of its seizure no person by notice in writing filed with the board claims to be the owner of the liquor, the liquor and all packages containing the same shall ipso facto be forfeited to the state of Montana, and shall forthwith be delivered to the board.

(4) If within the said time any claimant appears, it shall be incumbent upon him within that time, and after three days' notice in writing filed with the board stating the time and place fixed for the hearing, to prove his claim and his right under the provisions of this act to the possession of such liquor and packages to the satisfaction of any court, and on failure within that time to prove and establish his claim and right the liquor and packages shall ipso facto be forfeited to the state of Montana.

History: En. Sec. 76, Ch. 105, L. 1933.

2815.136. Disposal of forfeited liquor—report by officers of seizure.

(1) In every case in which a court makes any order for the forfeiture of liquor under any of the provisions of this act, and in every case in which any claimant to liquor under the provisions of section 2815.135 hereof, fails to establish his claim and right thereto, the liquor in question and the packages in which the liquor is kept shall forthwith be delivered to the board. The board shall thereupon, determine the market value of all forfeited liquor which is found to be suitable for sale in the state liquor stores, and the board shall pay the amount so determined to the state treasurer, after deducting therefrom the expenses necessarily incurred by the board for transporting

the forfeited liquor to the state liquor warehouses, and the liquor suitable for sale shall be taken into stock by the board and sold under the provisions of this act. All forfeited liquor which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the board.

(2) In every case in which liquor is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the board a report in writing, of the particulars of such seizure.

History: En. Sec. 77, Ch. 105, L. 1933.

2815.137. Inspection of carriers' records—when authorized. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this act, the board or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

History: En. Sec. 78, Ch. 105, L. 1933.

2815.138. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the board or by a person so appointed by it shall be guilty of an offense against this act.

History: En. Sec. 79, Ch. 105, L. 1933.

2815.139. Description of offense, sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing or the consumption of liquor in any information, summons, conviction, warrant, or proceeding under this act, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, simply without stating the name or kind of such liquor or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

History: En. Sec. 80, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.140. Description of offense—sufficiency—defenses need not be negatived. The description of any offense under this act, in the words of this act or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this act, may be proved by the defendant, but need not be specified or negatived

in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

History: En. Sec. 81, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

2815.141. Sufficiency of evidence. In any prosecution under this act for the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing, or consuming of liquor, it shall not be necessary that any witness should depose to the precise description or quantity of the liquor sold, disposed of, kept, had, given, purchased, or consumed, or the precise consideration (if any) received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

History: En. Sec. 82, Ch. 105, L. 1933.

2815.142. Proof of violation—sufficiency. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of liquor, it shall not be necessary in any prosecution to show that any money actually passed or any liquor was actually consumed, if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on premises on which such consumption is prohibited, by some person not authorized to consume liquor thereon, shall be evidence that such liquor was sold or given to or purchased by the person consuming, or being about to consume, or carrying away the same, as against the occupant of the said premises.

History: En. Sec. 83, Ch. 105, L. 1933.

2815.143. Analyst's report as prima facie evidence of contents. In any prosecution under this act, or the regulations made thereunder, production by a police officer, policeman, constable, inspector or peace officer, of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any liquor or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature.

History: En. Sec. 84, Ch. 105, L. 1933.

2815.144. Presumption of intoxicating liquor arises, when. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the liquor in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an intoxicating liquor.

History: En. Sec. 85, Ch. 105, L. 1933.

2815.145. Inferences from facts of act claimed to be violation. Upon the hearing of any charge of selling or purchasing liquor, or of unlawfully

having or keeping liquor, contrary to any of the provisions of this act, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of liquor found in the possession of the person accused, or in any building, premises, vehicle, motor-car, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which liquor is received thereat or therein or is removed therefrom, and from the circumstances under which it is kept or dealt with.

History: En. Sec. 86, Ch. 105, L. 1933.

2815.146. Defendant to prove innocence, when. If, on the prosecution of any person charged with committing an offense against this act, in selling or keeping for sale or giving or keeping or having or purchasing or receiving liquor, prima facie proof is given that such person had in his possession or charge or control any liquor in respect of or concerning which he is being prosecuted, then, unless such person proves that he did not commit the offense with which he is so charged, he may be convicted of the offense.

History: En. Sec. 87, Ch. 105, L. 1933.

2815.147. Burden of proof. (1) The burden of proving the right to have or keep or sell or give or purchase or consume liquor shall be on the person accused of improperly or unlawfully having or keeping or selling or giving or purchasing or consuming such liquor.

(2) The burden of proving that any prescription or administration of liquor is bona fide and for medical purposes only shall be upon the person who prescribes or administers such liquor, or causes such liquor to be administered, and the court trying a case shall have the right to draw inferences of fact from the frequency with which similar prescriptions are given and from the amount of liquor prescribed or administered, and from the circumstances under which it is prescribed or administered.

History: En. Sec. 88, Ch. 105, L. 1933.

2815.148. District court to have jurisdiction of offenses. The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act, and in all civil actions for the recovery or enforcement of fines, penalties and forfeitures provided for in this act, and all such actions, both criminal and civil, shall be instituted, prosecuted and tried in the district court.

History: En. Sec. 2, Ch. 166, L. 1935.

2815.149. Appeals. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this act and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

History: En. Sec. 89, Ch. 105, L. 1933.

2815.150. Inspectors and prosecuting officers may be employed by board. The board may appoint one or more inspectors or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said board may fix.

History: En. Sec. 90, Ch. 105, L. 1933.

2815.151. Property and moneys acquired belong to state—expenses of administration, how paid. All property, whether real or personal, all moneys acquired, administered, possessed or received by the board and all profits earned in the administration of this act, shall be the property of the state, and all expenses, debts and liabilities incurred by the board in connection with the administration of this act, shall be paid by the board from the moneys received by the board under such administration.

History: En. Sec. 91, Ch. 105, L. 1933.

2815.152. Reports to state examiner—annual reports—contents. (1) The board shall from time to time make reports to the state examiner covering such matters in connection with the administration or enforcement of this act as he may require, and shall annually make a report for the twelve months ending on the thirty-first day of December in the year in which the report is made, which shall contain—

(a) A statement of the nature and amount of the business transacted by each vendor under this act during the year;

(b) A statement of its assets and liabilities including a profit and loss account, and such other accounts and matters as may be necessary to show the result of operations of the board for the year;

(c) General information and remarks as to the working of the law within the state;

(2) Every annual report made under this section shall be forthwith laid before the legislature if the legislature is then in session, and if not then in session, shall be laid before the legislature within fifteen days after the opening of the next session.

(3) The books and records of the board shall at all times be subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: En. Sec. 92, Ch. 105, L. 1933.

2815.153. Board to pay expenses of administering act. The board shall make all payments necessary for the administration of this act, including the payment of the expenses of the members of the board and its staff, and all expenditures incurred in establishing and maintaining state liquor stores and in the administration of this act.

History: En. Sec. 93, Ch. 105, L. 1933.

2815.154. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores or from license fees or taxes or otherwise, arising in the administration of this act, shall be paid to the board, and the board is hereby authorized to make such expenditures from such fund as from time to time becomes necessary in the administration of this act, including in such expenditures all salaries, expenses of officers, agents and employees, and all proper expenditures incurred in acquiring property and merchandise in connection with the administration of this act.

History: En. Sec. 94, Ch. 105, L. 1933.

2815.155. When balance sheet and profit and loss statement to be made. The accounts of the board shall be made up to the 31st day of December in each year and at such other times as may be required by the state exam-

iner; and in every case the board shall prepare a balance sheet and statement of profit and loss and submit the same to the state examiner.

History: En. Sec. 95, Ch. 105, L. 1933.

2815.156. Reserve fund may be created. From the profits arising under this act, as certified by the state examiner, there shall be taken such sums as may be determined by the board for the creation of a reserve fund to meet any loss that may be incurred by the state in connection with the administration of this act, or by reason of its repeal.

History: En. Sec. 96, Ch. 105, L. 1933.

2815.157. Disposition of net profits. For the two years immediately following the approval of this act the net profits derived from time to time after providing the money required for the administration of this act shall be by the state treasurer distributed as follows:

For the year ending March 1, 1936, 33 1/3 % thereof to the general fund of the state of Montana, 15 % thereof to the administration fund of the water conservation board, and the remaining 51 2/3 % to the relief fund of the state of Montana to be administered by the Montana relief commission; provided, that when the general fund shall have received from the foregoing allocation a sum aggregating three hundred thousand dollars (\$300,000.00) and the administration fund of the water conservation board shall have received a sum aggregating one hundred thousand dollars (\$100,000.00), then all of the net profits so derived from time to time after providing the money required for the administration of this act shall be by the state treasurer distributed to the relief fund of the state of Montana.

For the year beginning March 1, 1936, and ending March 1, 1937, the net profits derived from time to time after providing the money required for the administration of this act shall be by the state treasurer distributed as follows: 33 2/3 % thereof to the general fund of the state of Montana; 6 2/3 % thereof to the administration fund of the water conservation board; 10 % thereof to the conservation revolving fund of the water conservation board, and the remaining 50 % to the relief fund of the state of Montana to be administered by the Montana relief commission; provided, that when the general fund shall have received from the last foregoing allocation a sum aggregating three hundred thousand dollars (\$300,000.00) and the administration fund of the water conservation board, shall have received a sum aggregating one hundred thousand dollars (\$100,000.00) and the conservation revolving fund of the water conservation board shall have received a sum aggregating one hundred and fifty thousand dollars (\$150,000.00) then all of the net profits so derived from time to time after providing the money required for the administration of this act shall be by the state treasurer distributed to the relief fund of the state of Montana, until said relief fund receives the aggregate sum of three million dollars (\$3,000,000.00) as provided by this act.

History: En. Sec. 97, Ch. 105, L. 1933; amd. Sec. 1, Ch. 57, Ex. L. 1933; amd. Sec. 20A, Ch. 109, L. 1935.

2815.158. Orders for purchase of liquor—cancellation of orders. Every order for the purchase of liquor shall be authorized by the secretary of the board and no order shall be valid or binding unless so authorized. A duplicate of every such order shall be kept at the principal office of the

board. All cancellations of orders shall be executed in the same manner and a duplicate thereof kept as aforesaid.

History: En. Sec. 98, Ch. 105, L. 1933.

2815.159. Intent and construction of act. The purpose and intent of this act are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this act, and every section and provision of this act shall be construed accordingly. The provisions of this act dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a board and otherwise provide the means by which such state control shall be made effective, and nothing in this act shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state.

History: En. Sec. 99, Ch. 105, L. 1933.

2815.160. Officers may administer oaths. Every vendor and every official authorized by the board to issue permits under this act may administer any oath and take and receive any affidavit or declaration required under this act or the regulations.

History: En. Sec. 100, Ch. 105, L. 1933.

2815.161. Indebtedness may be created—limitation. The board is hereby authorized to incur indebtedness in the administration of this act for necessary expenses and the acquisition of necessary property and merchandise, provided, however, that the total amount of outstanding indebtedness shall not at any time exceed the sum of twenty-five thousand dollars (\$25,000.00) and provided further that any indebtedness so incurred by the board shall be paid solely out of the moneys arising in the administration of this act.

History: En. Sec. 101, Ch. 105, L. 1933.

2815.162. Effective date of act—intent of act. This act shall go into full force and effect at such time as the manufacture, importation and sale of distilled or vinous liquors, or either or any of them for beverage purposes, shall become lawful under the constitution and laws of the United States; it being hereby declared that this act is intended as a companion measure to an act entitled: "An act to provide for the licensing and regulation, manufacture, sale and distribution of beer and other similar fermented beverages, and for the raising and disposition of revenue therefrom," which latter act is to become effective at such time as the Congress of the United States shall pass a law declaring that beer with an alcoholic content of at least three per centum (3%) by weight is non-intoxicating; it being the purpose and intention of this act to control and regulate the sale of distilled and vinous liquors and beer at such time as the constitution of the United States shall permit, and not to interfere with the regulatory measures providing for the sale of beer and other similar fermented beverages at such time as the Congress of the United States shall make change in the provision of the law determining the alcoholic content permitted for sale of beer and malt extracts; it being further declared to be the intention of this act that it shall be administered and applied in conjunction with said act above designated, regulatory of the sale and distri-

bution of beer and other fermented beverages, the impelling thought being that the Congress of the United States will modify the present existing law respecting the alcoholic content of beer and other fermented beverages before a repeal shall have been accomplished of the Eighteenth Amendment to the constitution of the United States.

History: En. Sec. 102, Ch. 105, L. 1933.

2815.163. Penalty for violations not otherwise provided for. Anyone violating any of the provisions of this act shall be guilty of a misdemeanor and be subject to punishment not exceeding five hundred dollars (\$500.00) fine, or six (6) months' imprisonment, either or both; except where other penalties or punishment is herein expressly provided.

History: En. Sec. 103, Ch. 105, L. 1933.

References

State v. Wiles, 98 M 577, 41 P 2d 8.

CHAPTER 256

WORKMEN'S COMPENSATION ACT

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- 3030. Orders, rules, findings, etc., of board as evidence.
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- 3032. When rate upon place may be advanced fifty per cent.
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2816. Name of act—what each part to contain. This act shall be known and may be cited as the workmen's compensation act. Part I (sections 2816 to 2969) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions"; part II (sections 2970 to 2977) shall contain those sections which refer to compensation plan number one; part III (sections 2978 to 2989) shall contain those sections which refer to compensation plan number two; part IV (sections 2990 to 3011) shall contain those sections which refer to compensation plan number three; part V (sections 3012 to 3033) shall contain those sections which may be referred to as the "safety provisions."

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R. C. M. 1921.

objectionable on the ground that it discriminates against either employer or employee.

Absolute Remedy

It is competent for a party to waive his right to have a cause of action determined by a court before it actually arises, especially where the legislature has provided a substitute remedy, as under the compensation act, which renders his right to relief absolute. *Shea v. North-Butte Min. Co.*, 55 M 522, 536, 179 P 499.

Construction of Act

In the construction of the workmen's compensation act, all of its sections, as originally enacted or amended, must be considered together in such manner as to give effect to the act as a whole. *State v. Industrial Acc. Board et al.*, 94 M 386, 387, 23 P 2d 253.

Applicable to County Employees

The workmen's compensation act is applicable to counties and county employees, and as such it is not class legislation, nor is it in violation of the constitutional prohibition against donations to individuals. *Lewis and Clark County v. Industrial Accident Board*, 52 M 6, 12, 155 P 268.

Theory of Act

The theory of the workmen's compensation act is that loss occasioned by injury to the workman shall not be borne by him alone, but directly by the industry and indirectly by the public, the same as is the deterioration of the buildings, machinery and other appliances necessary to enable the employer to carry on the particular industry. *Murray Hospital v. Angrove*, 92 M 101, 10 P 2d 577.

Constitutionality

The workmen's compensation act is not repugnant to the state constitution. *Shea v. North-Butte Min. Co.*, 55 M 522, 179 P 499.

Id. The rule, that a statute will not be declared invalid on constitutional grounds unless its invalidity is made to appear beyond a reasonable doubt, applies with peculiar force where, as in the case of the workmen's compensation act, the statute seems to have been found satisfactory after a four-year period of operation, by those directly affected by it, namely, the employer and the employee.

Id. Inasmuch as the workmen's compensation act becomes binding upon the employer and the employee only at their election, neither may thereafter object to its enforcement, and the fact that the modes in which they may indicate their election are different, does not make it

To accomplish the purpose for which the workmen's compensation act was passed, to-wit, that the loss occasioned to an employee by reason of an injury, shall not be borne by him alone but directly by the industry and indirectly by the public, its provisions must be liberally construed, but in so construing it the industrial accident board and the courts may not disregard its plain provisions or award compensation in a case for which no provision is made therein. *Kerns v. Anaconda Copper Min. Co.*, 87 M 546, 549, 289 P 563. See, also, *Betor v. National Biscuit Co.*, 85 M 481, 280 P 641, and *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 254 P 880.

References

Cited or applied in *Chenoweth v. Great Northern Ry. Co.*, 50 M 481, 488, 148 P

330; Page v. New York Realty Co., 59 M 305, 310 et seq., 196 P 871; Kamboris v. Chicago etc. Ry. Co., 62 M 88, 203 P 859; Wirta v. North Butte Mining Co. et al., 64 M 279, 285, 210 P 332; Bruce v. McAdoo, 65 M 275, 287, 211 P 772; Black v. Northern Pac. Ry. Co., 66 M 538, 214 P 82; Miller v. Granite County Power Co. et al., 66 M 368, 371 et seq., 213 P 604; Novak v. Industrial Accident Board, 73 M 196, 235 P 754; Dosen v. East Butte Copper Min. Co., 78 M 579, 254 P 880; Nickolson v. Roundup Coal Min. Co. et al., 79 M 358, 367, 257 P 270; Moore v. Industrial Accident Fund, 80 M 136, 259 P 825; Chmielewska v. Butte & Superior Min. Co., 81 M 36, 261 P 616; London G. & A. Co., Ltd. v. Indus. Acc. Bd., 82 M 304, 266 P 1103; Sullivan v. Anselmo Mining Corp. et al., 82 M 543, 268 P 495; Edwards v. Butte & Superior Min. Co., 83 M 122, 270 P 634; Goodwin v. Elm Orlu Min. Co. et al., 83 M 152, 269 P 403; Herberson v. Great Falls Wood & Coal Co., 83 M 527, 273 P 294; Landeen v. Toole County Refining Co., 85 M 41, 277 P 615; Betor v. National Biscuit Co., 85 M 481, 280 P 641; Loney v. Industrial Accident Board, 87 M 191, 193, 286 P 408; Maki v. Anaconda Copper Min. Co., 87 M 314, 287 P 170; Kerns v. Anaconda

Copper Min. Co., 87 M 546, 289 P 56; Mulholland v. Butte & Superior Min. Co., 87 M 561, 289 P 574; Industrial Acc. Board v. Brown Bros. L. Co., 88 M 375, 292 P 902; State v. District Court, 88 M 400, 293 P 291; Lindblom v. Employers' etc. Assur. Corp., 88 M 488, 295 P 1007; Nelson v. Stukey, 89 M 277, 300 P 287; Kearney v. Industrial Acc. Board, 90 M 228, 1 P 2d 919; Cogdill v. Aetna Life Ins. Co. et al., 90 M 244, 2 P 2d 292; Radonich v. Anaconda Copper Min. Co., 91 M 437, 439, 8 P 2d 658; Murray Hospital v. Angrove, 92 M 101, 10 P 2d 577; Davis v. Industrial Accident Board, 92 M 503, 15 P 2d 919; Murphy v. Industrial Accident Board, 93 M 1, 16 P 2d 705; State v. Industrial Acc. Board et al., 94 M 386, 387, 23 P 2d 253; Williams v. Brownfield-Canty Co. et al., 95 M 364, 368, 26 P 2d 980; Clark v. Olson, 96 M 417, 420, 31 P 2d 283; Paulich v. Republic Coal Co., 97 M 224, 33 P 2d 514; In re Maury et al., 97 M 316, 34 P 2d 380; Anderson v. Amalgamated Sugar Co., 98 M 23, 37 P 2d 552; Birdwell v. Three Forks Portland C. Co., 98 M 483, 40 P 2d 43; Woin v. Anaconda Copper Min. Co., 99 M 163, 43 P 2d 662; McDaniel v. Eagle Coal Co. et al., 99 M 309, 43 P 2d 655.

2817. Reference to plan numbers. Whenever compensation plans number one, two, or three, or the safety provisions of this act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject-matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R. C. M. 1921.

2818. "Compensation provisions." The "compensation provisions" of this act, whenever referred to, shall be held to include the provisions of compensation plans number one, two, or three, and all other sections of this act applicable to the same, or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R. C. M. 1921.

2819. Industrial accident board—compensation—term and salary. There is hereby created a board to consist of three members; the commissioner of agriculture, labor, and industry shall be one member; the state auditor shall be one member, and one member shall be appointed by the governor, which board shall be known as the industrial accident board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of five thousand dollars, payable monthly, and shall be chairman of the board.

The board shall elect one of their number as treasurer of the board.

History: En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921; re-en. Sec. 2819, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 2 (a), chapter 96, laws of 1915, before amendment, in City of Butte v. Industrial Accident

Board, 52 M 75, 79, 156 P 130; Bruce v. Mining Co. et al., 64 M 279, 285, 210 P 332; State ex rel. Nagle v. Stafford et al., 97 M 275, 279, 34 P 2d 372.
 McAdoo, 65 M 275, 287, 211 P 772; Page v. New York Realty Co., 59 M 305, 310 et seq., 196 P 871; Wirta v. North Butte

2820. Vacancy in office and removal of appointive member. A vacancy in the office of the appointed member of the board shall be filled in the same manner as the original appointment, but shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.

History: En Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2820, R. C. M. 1921.

2821. Official bonds. Each member shall, upon entering upon the duties of his office, execute to the state of Montana and file with the secretary of state a bond in the sum herein prescribed, executed by not less than four responsible sureties, or by some surety company authorized to become sole surety on bonds in the state of Montana, such bond to be approved by the governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

History: En. Sec. 2, Ch. 96, L. 1915;
 re-en. Sec. 2821, R. C. M. 1921.

References

State ex rel. Nagle v. Stafford et al., 97 M 275, 279, 34 P 2d 372.

2822. Treasurer's bond—bond of other members. The bond of the treasurer of the board shall be in a sum to be fixed by the governor, not less than twenty-five thousand dollars, nor more than one hundred thousand dollars. The bonds of the members of the board other than the treasurer shall be in the sum of ten thousand dollars.

History: En. Sec. 2, Ch. 96, L. 1915;
 re-en. Sec. 2822, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Cited or applied as section 2 (d), chapter 96, laws of 1915, in City of Butte v. Industrial Accident Board, 52 M 75, 79, 156 P 130; State ex rel. Nagle v. Stafford et al., 94 M 275, 279, 34 P 2d 372.

2823. Ex-officio members to receive no additional compensation. Neither the commissioner of labor and industry nor the state auditor shall receive any additional compensation for the duties imposed upon them by this act.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2823, R. C. M. 1921.

2824. Quorum—powers in case of vacancy—hearings—findings and orders. A majority of the board shall constitute a quorum for the transaction of any business. A vacancy on the board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the board. The act of the majority of the board when in session as a board shall be deemed to be the act of the board, but any investigation, inquiry, or hearing which the board has power to undertake or to hold, may be undertaken or held by or before any member thereof, or any examiner or referee appointed by the board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee, pursuant to such investigation, inquiry, or hearing, when approved

and confirmed by the board and ordered filed in its office, shall be deemed to be the finding, order, decision, or award of the board.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2824, R. C. M. 1921.

2825. Seal of board. The board shall have a seal bearing the following inscription. "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the board shall direct. All courts shall take judicial notice of said seal.

History: En. Sec. 2, Ch. 96, L. 1915;
re-en. Sec. 2825, R. C. M. 1921.

References

Cited or applied as section 2 (g), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 79, 156 P 130.

2826. Office and furnishings—temporary quarters. The board shall keep its principal office in the capital of the state, and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the board shall have power to rent temporary quarters.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R. C. M. 1921.

2827. Secretary—appointment, term, duties—records. The board shall appoint a secretary who shall hold office at the pleasure of the board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the board; to issue all necessary processes, writs, warrants, and notices which the board is required or authorized to issue, and generally to perform such other duties as the board may prescribe.

History: En. Sec. 2, Ch. 96, L. 1915;
re-en. Sec. 2827, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Cited or applied as section 2 (i), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 79, 156 P 130.

2828. Other assistants and employees. The board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 96, L. 1915;
re-en. Sec. 2828, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Cited or applied as section 2 (j), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 79, 156 P 130.

2829. Compensation of officers and employees—term of office and duties. All officers and employees of the board shall receive such compensation for their services as may be fixed by the board, shall hold office at the pleasure of the board, shall perform such duties as are imposed on them by law or by the board.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2829, R. C. M. 1921.

2830. Salaries to be paid monthly—approval and auditing. The salaries of members of the board, secretary, and every other person holding office or employment under the board, as fixed by law or by the board, shall

be paid monthly after being approved by the board upon claims therefor to be audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2830, R. C. M. 1921.

2831. Expenses to be paid from what fund. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the board, either within or without the state, shall, unless otherwise provided in this act, be paid from the industrial administration fund, after being approved by the board upon claims therefor to be audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2831, R. C. M. 1921.

2832. Blank forms, minutes and records. The board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the board, and such other books or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the board.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Cited or applied as section 2 (n), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 79, 156 P 130.

2833. Reports and bulletins which may be published. The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R. C. M. 1921.

2834. Fees of board. The board shall have power and authority to charge and collect the following fees:

1. For copies of papers and records not required to be certified or otherwise authenticated by the board, fifteen cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, twenty cents for each folio.

2. To fix and collect reasonable charges for publications issued under its authority.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the state, to the credit of the industrial administration fund, and shall be accompanied by a detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R. C. M. 1921.

2835. Attorney general legal adviser of board. The attorney general shall be the legal adviser of the board, and shall represent it in all proceedings whenever so requested by the board or any member thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R. C. M. 1921.

2836. Defenses excluded in personal injury action—negligence of employee—fellow-servant—assumption of risk. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense:

(1) That the employee was negligent, unless such negligence was wilful;

(2) That the injury was caused by the negligence of a fellow employee;

(3) That the employee had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2836, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Under the provisions of the workmen's compensation act, negligence of the employer is not an essential element of his liability for injuries sustained by the employee arising out of his employment, nor are the defenses of contributory negligence and assumption of risk available to the employer in avoidance of compensation. *Nicholson v. Roundup Coal Min. Co. et al.*, 79 M 358, 376, 257 P 270.

Where a dentist also operated for gain a large apartment house, in the construc-

tion of an addition to which plaintiff employee was injured, the former's contention, in an action for damages, that the latter's employment was "casual," i.e., not in the usual course of trade, business or profession of defendant, and that therefore the provision of this section making unavailable certain defenses to an employer, did not apply to him, held not maintainable, since a person may be engaged in more than one business, trade or profession; the building of the addition to the apartment house business, plaintiff's employment was in the usual course of that business. *Nelson v. Stukey*, 89 M 277, 285, 300 P 287.

References

Miller v. Granite County Power Co. et al., 66 M 368, 372, 213 P 604; *Bruce v. McAdoo*, 65 M 275, 288, 211 P 772.

2837 Defenses not excluded in personal injury action against employer in non-hazardous occupation and certain other occupations. The provisions of section 2836 shall not apply to actions to recover damages for personal injuries sustained by household and domestic servants or those employed in farming, dairying, agricultural, viticultural, and horticultural, stock or poultry raising, or engaged in the operation and maintenance of steam railroads conducting interstate commerce, or persons whose employment is of a casual nature.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2837, R. C. M. 1921; amd. Sec. 1, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Casual Employment

An employer who elects not to come under the provisions of the workmen's compensation act, may, under this section, invoke the common-law defenses of contributory negligence, negligence of a fellow-servant and assumption of risk in an action for personal injuries sustained by an employee, if the injuries were sustained while the latter was engaged in an employment of a casual nature, even

though such employment was hazardous within the meaning of the act. *Miller v. Granite County Power Co. et al.*, 66 M 368, 372 et seq., 213 P 604.

Employment is not "casual," within the meaning of the workmen's compensation act (sec. 2888 and secs. 2837 and 2863, as amended, Ch. 121, laws of 1925), in the sense that injuries sustained during the course of such employment are not compensable, if the employment was in the usual course of trade or business of the employer. *Industrial Acc. Board v. Brown Bros. Lumber Co.* 88 M 375, 380, 292 P 902.

Id. An injury is received in the course of employment, under the above rule, when it occurs while the workman is doing the duty which he is employed to perform,

though the employment be but temporary or casual.

Id. A truck driver was directed by his employer to deliver a load of cement in a neighboring town; on his return the truck became mired in a mud-hole from which, without help, he was unable to extricate it; he so informed the employer by phone, who advised him that the truck was needed in his business and to procure help. The person procured to assist him was injured in an attempt to extricate the truck. Held, under the above rules, that under the circumstances the helper was employed to work for the truck driver's employer in the course of the latter's business, that the fact that the helper's employment was but temporary or casual was, therefore, of no importance, and hence that the injury sustained by the helper was compensable under the provisions of the workmen's compensation act.

Where a dentist also operated for gain a large apartment house, in the course of an addition to which plaintiff employee was injured, the former's contention, in an action for damages, that the latter's employment was "casual," i.e., not in the usual course of trade, business or profession of defendant, and that therefore the provision of section 2836, R. C. M. 1921 (workmen's compensation act), making unavailable certain defenses to an employer, did not apply to him, (this section), held not maintainable, since a person may be engaged in more than one business, trade or profession; the building of the addition to the apartment house having been in furtherance of defendant's apartment house business, plaintiff's employment was in the usual course of that business. *Nelson v. Stukeley*, 89 M 277, 285, 300 P 287.

2838. Employers not liable for death or injury other than herein defined—employees who elect not to come under law. Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 2836, nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for and on account of such death of, or personal injury to, any such employee are hereby abolished; provided, that section 2836 shall not apply to actions brought by an employee who has elected not to come under this act, or by his representatives, for damages for personal injuries or death, against an employer who has elected to come under this act.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2838, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Exclusive Remedy

That the compensation act of this state, in so far as it provides compensation to an injured employee for injuries received from an accident growing out of and in the course of his employment is exclusive of all other remedies is unquestionable. *Wirta v. North Butte Mining Co. et al.*, 64 M 279, 287, 210 P 332. See, also, *Bruce v. McAdoo*, 65 M 275, 287, 211 P 772.

In an action for injuries sustained by a city street cleaner while engaged in the usual course of his employment by being

run over by an automobile prior to the enactment of chapter 138, laws of 1933, (sections 2839 and 2839.1 of this code) granting an employee protected by the workmen's compensation act a right of action against a third person through whose negligence he was injured, held, under prior decisions to the same effect, that under the compensation act as in force at the time of the accident (this section and section 2839), the remedy afforded the injured employee by the act was exclusive, plaintiff's common-law right to sue such third person having been abolished. (*Mr. Justice Angstman, dissenting*). *Clark v. Olson*, 96 M 417, 426, 31 P 2d 283.

References

Miller v. Granite County Power Co. et al., 66 M 368, 373, 213 P 604.

2839. Election of employer and employee to come under act—action against third party causing injury. Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such em-

ployer and such employee, as between themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and those conducting his business during liquidation, bankruptcy or insolvency. Provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the act or omission of some persons or corporations other than his employer, and where the cause of such injury has no direct connection with his regular employment, and does not arise out of or necessarily follow as an incident thereof, then such employee, or in case of his death his heirs or personal representatives, shall, in addition to the right to receive compensation under the workmen's compensation act, have a right to prosecute any cause of action he may have for damages against such persons or corporations, causing such injury. In the event said employee shall prosecute an action for damages for or on account of such injuries so received, he shall not be deprived of his right to receive compensation but such compensation shall be received by him in addition to and independent of his right to bring action for such damages, provided, that in the event said employee, or in case of his death, his personal representative, shall bring such action, then the employer or insurance carrier paying such compensation shall be subrogated to the extent of one-half ($\frac{1}{2}$) of the gross amount received by such employee as compensation under the workmen's compensation law. All expense of prosecuting such action shall be borne by the employee, or if the employee shall fail to bring such action or make settlement of his cause of action within six (6) months from the time such injury is received, the employer or insurance carrier who pays such compensation may thereafter bring such action and thus become entitled to all of the amount received from the prosecution of such action up to the amount paid the employee under the workmen's compensation act, and all over that amount shall be paid to the employee. In the event that the amount of compensation payable under this act shall not have been fully determined at the time such employee shall receive settlement of his action, prosecuted as aforesaid, then the industrial accident board shall determine what proportion of such settlement the insurance carrier would be entitled to receive under its right of subrogation and such finding of the board shall be conclusive. Such employer or insurance carrier shall have a lien on such cause of action for one-half ($\frac{1}{2}$) of the amount paid to such employee as compensation under the workmen's compensation act, which shall be a first lien thereon.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2839, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1933.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Actions Against Third Parties

Where a coal mining company and its employees had elected to operate under plan 3 of the workmen's compensation act, and plaintiff employee received injuries in the course of his employment at the company's plant because of a defective brake on a car furnished his employer by defendant railroad company, held, prior to amendment of 1933, the remedy afforded him by the provisions of the compensation act was exclusive, depriving him of the right to maintain action for damages against the railroad company for its negligent failure to have the car equipped with a reasonably safe appliance. *Black v. Northern Pac. Ry. Co.*, 66 M 538, 549, 214 P 82.

Exclusive Remedy

When an employee has elected to become subject to the provisions of the workmen's compensation act, neither he nor his personal representatives in case of the former's death may thereafter prosecute an action for damages against the employer for an injury suffered by him during the course of his employment. *Shea v. North Butte Min. Co.*, 55 M 522, 532, 179 P 499.

The workmen's compensation act, in so far as it provides compensation to an injured employee for injuries received from an accident growing out of and in the course of his employment, is exclusive of all other remedies. *Wirta v. North Butte Mining Co. et al.*, 64 M 279, 285, 210 P 332.

Plaintiff's intestate, an employee at a coal mine tippie, was killed on the premises of his employer, while assisting to

move a box-car on a spur-track leading to the tippie for the purpose of loading, the accident having been caused by the sudden stopping of the car due to a brake-shoe becoming loose and falling on the track in front of the moving car. His widow claimed and was paid compensation for his death under the provisions of the workmen's compensation act. His administrator thereupon brought action against the director-general of railroads to recover damages for negligence in furnishing the coal company a defective car. Held, prior to amendment of 1933, that the action did not lie, the provisions of the compensation act with relation to compensation being exclusive of any other remedy, except where the injury was caused by the negligence of a third person away from the plant of the employer, in which case alone the employee or his beneficiaries in case of death are given the right of election whether to take under the act or seek damages from such third person. *Bruce v. McAdoo*, 65 M 275, 287, 211 P 722.

Silence Presumes Election to be Bound

The silence of an employee, when given an opportunity to elect whether he will be bound or not bound by the provisions of the workmen's compensation law, establishes a presumption that he elects to become subject to it. *Shea v. North Butte Min. Co.*, 55 M 522, 536, 179 P 499.

References

Miller v. Granite County Power Co. et al., 66 M 368, 373, 213 P 604; *Nicholson v. Roundup Coal Min. Co. et al.*, 79 M 358, 375, 257 P 270; *Clark v. Olson*, 96 M 417, 425, 31 P 2d 283.

2839.1. Defenses available. In any such action brought by an employee, all defenses that would be available to defendant but for the workmen's compensation act shall be available as defenses in such action.

History: En. Sec. 2, Ch. 138, L. 1933.

References

Clark v. Olson, 96 M 417, 433, 31 P 2d 283.

2840. Compensation plan No. 3 exclusive, etc., when a public corporation is the employer—duty of governing body of corporations. Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses,

appropriations, ordinances, or otherwise. Whenever any contractor engaged in the performance of contract work for any public corporation is the employer, such public corporation upon final settlement with the contractor shall deduct for the benefit of the industrial accident fund the amount of all premium assessments necessary to be paid by such contract under the provisions of this act. Whenever any public corporation neglects or refuses to file with the industrial accident board monthly payroll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Exclusive as to Cities

Compensation plan No. 3 is, as to a city, exclusive, compulsory, and obligatory upon both employer and employee. *City of Butte v. Industrial Accident Board*, 52 M 75, 77, 156 P 130.

National Forest Service Not a Public Corporation

The national forest service is not a public corporation within the meaning of

the workmen's compensation act and is not covered by this section, providing that where a public corporation is the employer, or any contractor doing contract work for such corporation, the provisions of compensation plan No. 3 shall be exclusive and compulsory upon employer and employee. *Loney v. Industrial Accident Board*, 87 M 191, 194, 286 P 408.

References

Cited or applied as section 3 (e), chapter 96, laws of 1915, before amendment, in *Lewis and Clark County v. Industrial Accident Board*, 52 M 6, 7, 155 P 268; *City of Butte v. Industrial Accident Board*, 52 M 75, 77, 156 P 130; *Clark v. Olson*, 96 M 417, 424, 31 P 2d 283.

2841. Employers engaged in hazardous industries—election. Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous," may, on or before the first day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may, on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed by the board, and shall state whether such employer shall be bound by compensation plan number one, or compensation plan number two, or compensation plan number three, and a notice of such election, with the nature thereof shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2841, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 3 (f), chapter 96, laws of 1915. *City of Butte v. Industrial Accident Board*, 52 M 75, 76, 156 P 130; *Shea v. North Butte Min. Co.*, 55 M 522, 530, 179 P 499; *Bruce v. McAdoo*, 65 M 275, 211 P 772.

2842. Employee engaged in hazardous occupation bound by what plan—election. Every employee in the industries, works, occupations, or em-

ployments in this act specified as "hazardous," shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employee shall elect not to be bound by any of the compensation provisions of this act, and until such employee shall have made such election. Such election shall be made by written notice in the form prescribed by the board, served upon the employer, and a copy filed with the board, together with the proof of such service.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 3 (g), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 80, 156 P 130; *Shea v. North Butte Min. Co.*, 55 M 522, 530, 179 P 499.

2843. Failure to elect—time for which election binds employer. If the employer shall fail to make the election herein provided for, at the time and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either compensation plan number one, or compensation plan number two, or compensation plan number three for that fiscal year, unless such employer shall elect to become subject to or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election, except as hereinafter provided, for said first fiscal year and each succeeding fiscal year, provided however that such employer may at any time upon thirty days written notice to the insurer or the board, as the case may be, elect to be bound by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2843, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1933.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 3 (h), chapter 96, laws of 1915, in *Shea v. North Butte Min. Co.*, 55 M 522, 530, 179 P 499.

2844. Employer shall make election before being bound—employee presumed to have elected. It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2844, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 3 (i), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 76, 156 P 130; *Shea v. North Butte Min. Co.*, 55 M 522, 530, 179 P 499; *Miller v. Granite County Power Co. et al.*, 66 M 368, 373, 213 P 604.

2845. Election at any time. Any employee who has elected not to be bound by the provisions of this act in the manner herein provided may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the compensation plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employee shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employee for the rest of the then fiscal year.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2845, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 3 (j), chapter 96, laws of 1915, in *Shea v. North Butte Min. Co.*, 55 M 522, 530, 179 P 499.

2846. Compensation when employer has not elected. No compensation shall be paid to any employee, whether such employee has elected to come under this act or not, where his employer has failed to elect, and has failed to come under one or the other of the compensation plans herein provided.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2846, R. C. M. 1921.

2847. Act applies to all inherently hazardous occupations as enumerated. This act is intended to apply to all inherently hazardous works and occupations within this state, and it is the intention to embrace all thereof in the four following sections, and the works and occupations enumerated in said sections are hereby declared to be hazardous, and any employer having any workmen engaged in any of the hazardous works or occupations herein listed shall be considered as an employer engaged in hazardous works and occupations as to all his employees.

History: En. Sec. 4 Ch. 96, L. 1915; amd. Sec. 2, Ch. 100, L. 1919; re-en. Sec. 2847, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

If Any Employees of Concern Covered by Act, All Are

Under this section, held, that where an employer has any of his workmen covered by the protection afforded by the workmen's compensation act, all his employees will be held to come within its provisions. *Williams v. Brownfield-Canty Co. et al.*, 95 M 364, 371, 26 P 2d 980.

Nonhazardous Occupations

Held, that the operation of an electric passenger elevator is not a hazardous employment within the provisions of the workmen's compensation act. *Page v. New York Realty Co.*, 59 M 305, 310 et seq., 196 P 871.

Held, that the duties of a member of the board of county commissioners incidental to the inspection and the making of

repairs of highways are not of an inherently hazardous character, do not fall within any of those occupations enumerated in the workmen's compensation act and are not of the same general character as those mentioned therein, and that therefore compensation for the death of such an officer in an automobile accident on his return from a road inspection tour was properly disallowed. *Moore v. Industrial Accident Fund*, 80 M 136, 138, 259 P 825.

Operation Without Limits of the State

The provisions of this section that the workmen's compensation act shall apply "to all inherently hazardous works and occupations within this state," held not necessarily to exclude its operation beyond the limits of the state where the employee meets with an accidental injury, while furthering his employer's business localized in Montana, after passing over the state line. *Loney v. Industrial Accident Board*, 87 M 191, 197, 286 P 408.

Question of Law

The question as to what persons or accidents come within the provisions of the

workmen's compensation act is one of law rather than one of fact. Page v. New York Realty Co., 59 M 305, 310 et seq., 196 P 871.

References

Bruce v. McAdoo, 65 M 275, 289, 211 P 772; Miller v. Granite County Power Co. et al., 66 M 368, 373, 213 P 604.

2848. Construction work. Tunnels, bridges, trestles; subaqueous works, ditches, and canals (other than irrigation without blasting), dock excavations, fire-escapes, sewers, house moving, house wrecking, iron or steel frame structures or parts of structures, electric light, or power plants, or systems, telegraph or telephone systems; pile-driving, steam railroads, steeples, towers, or grain elevators, not metal framed; drydocks, without excavation; jetties, breakwaters, chimneys, marine railways, waterworks, or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fire-proof doors or shutters; steam-heating plants; blasting; tanks, water-towers, or windmills, not metal framed; shaft sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; gas-works or systems; marble, stone, or brick work; road-making, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smoke-stacks or chimneys; excavations not otherwise specified; blast-furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat-building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam-boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, mantel, stone, or tile setting; metal-ceiling work; mill or ship-wrighting; painting of building or structures; installation of automatic sprinklers; concrete laying in floors, foundations, or street paving; asphalt laying; covering steam-pipes or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire-alarm apparatus in buildings; house-heating or ventilating systems, glass setting; building hothouses; lathing, paper-hanging, plastering, wooden stair building.

History: En. Sec. 4, Ch. 96, L. 1915; re-en. Sec. 2848, R. C. M. 1921.

2849. Operation and repair work. (Including repair work) of logging, cable, electric, street, steam or other railroads; dredges; interurban electric railroads using third rail systems; electric light and power plants; quarries; telegraph systems; stone crushers; blast furnaces; smelters; coal mines; gas works; steam boats; tugs and ferries; mines other than coal; steam-heating or power plants; grain elevators; freight elevators and passenger elevators; laundries; water-works; paper-mills; pulp-mills; garbage and fertilizer works.

History: En. Sec. 4, Ch. 96, L. 1915; re-en. Sec. 2849, R. C. M. 1921; amd. Sec. 1, Ch. 117, L. 1925.

R. C. M. 1921) as an entirety, see references under section 2816.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

Bruce v. McAdoo, 65 M 275, 289, 211 P 772.

2850. Factories using power-driven machinery. Stamping tin metal; bridge work; railroad, car, or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle-mills, staves, veneer, box, lath, packing-cases, sash, doors, blinds, barrel, keg, pail, basket, tub, woodenware or wooden fibre ware, rolling-mills; making steam shovels or

dredges; tanks, water-towers, asphalt; building material not otherwise specified; fertilizer; cement, stone, with or without machinery; kindling-wood, masts or spars, with or without machinery; canneries, metal stamping; creosoting works; excelsior; iron; steel; copper; zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra-cotta, fire-clay, pottery, earthenware, porcelain ware; peat fuel, briquettes; breweries; bottling works; boiler works; foundries; machine-shops not otherwise specified; cordage; working in food-stuffs; including oils, fruits, and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber, or textiles not otherwise specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving, and lithographing, sugar factories.

History: En. Sec. 4, Ch. 96, L. 1915; re-en. Sec. 2850, R. C. M. 1921.

2851. Miscellaneous work. Operating stock-yards, with or without railroad entry; packing-houses; wharf operations; artificial ice and refrigerating or cold-storage plants; tanneries; electric systems not otherwise specified; theater stage employees, including moving-picture machine operators; fireworks manufacturing, powder works.

History: En. Sec. 4, Ch. 96, L. 1915; re-en. Sec. 2851, R. C. M. 1921.

2852. Hazardous occupations not enumerated or hereafter arising. If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall come under this act and its terms, conditions, and provisions as fully and completely as if hereinbefore enumerated.

History: En. Sec. 5, Ch. 96, L. 1915; re-en. Sec. 2852, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

This section declaring that if there be

or arise any hazardous occupation not enumerated in the workmen's compensation act, it shall nevertheless come within its provisions, has reference only to such employments as are of the same general character as those enumerated therein, under the rule of ejusdem generis. Moore v. Industrial Accident Fund, 80 M 136, 138, 259 P 825.

2853. Meaning of words employed in act. Unless the context otherwise requires, words and phrases employed in this act shall have the meanings hereinafter defined.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R. C. M. 1921.

2854. Factories defined. "Factories" means undertakings in which the business of working at commodities is carried on with power-driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2854, R. C. M. 1921.

2855. Workshop defined. "Workshop" means any plant, yard, premises, room, or place where power-driven machinery is employed and manual labor is exercised by way of trade or gain, or otherwise in or incidental to the process of making, altering, repairing, printing, or ornamenting, finishing, or adapting for sale, or otherwise, any article, or part of article, machinery, or thing, over which premises, room, or place the employer of the person working therein has the right of access or control.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2855, R. C. M. 1921.

2856. Mill defined. "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering, or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2856, R. C. M. 1921.

2857. Mine defined. "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2857, R. C. M. 1921.

2858. Quarry defined. "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2858, R. C. M. 1921.

2859. Engineering defined. "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers, street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam, or water-power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2859, R. C. M. 1921.

2860. "Reasonably safe place to work" defined. "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

History: En. Sec. 6, Ch. 96, L. 1915; R. C. M. 1921) as an entirety, see references under section 2816.
re-en. Sec. 2860, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., al., 79 M 358, 375, 257 P 270.

2861. "Reasonably safe tools and appliances" defined. "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the act for the purpose of mitigating or preventing a specific danger.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R. C. M. 1921.

2862. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, firm, voluntary associations and private corporation, including any public service corporation and including an independent contractor, who has any person in service, in hazardous employment, under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2862, R. C. M. 1921; amd. Sec. 2, Ch. 121, L. 1925.
NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Independent Contractor

An "independent contractor" generally speaking, is one employed to perform work on condition that he is free from the control of the employer as respects the manner in which the details thereof are to be executed. *Nelson v. Stukey*, 89 M 277, 292, 300 P 287.

2863. "Employee" and "workman" defined. "Employee" and "workman" are used synonymously and mean every person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written including aliens and also including minors, whether lawfully or unlawfully employed, and all who are connected with or engaged in hazardous occupations of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Employment How Terminated

Plaintiff having predicated his cause of action upon the relation of master and servant, his contention that his detention in the mine after eight hours had expired constituted false imprisonment as well as a violation of the eight-hour law thus terminating his employment, is without merit, since his employment could not be terminated in any such manner. *Wirta v. North Butte Mining Co. et al.*, 64 M 279, 285, 210 P 332.

Independent Contractor

An "independent contractor" (excluded from the benefits of the workmen's compensation act by this section), generally speaking, is one employed to perform work on condition that he is free from the control of the employer as respects the manner in which the details thereof

References

Cited or applied as section 6 (i), chapter 96, laws of 1915, in *Lewis and Clark County v. Industrial Accident Board*, 52 M 6, 7, 155 P 268; *City of Butte v. Industrial Accident Board*, 52 M 75, 76, 156 P 130.

are to be executed. *Nelson v. Stukey*, 89 M 277, 292, 300 P 287.

Public Officer

By this section, bringing elected and appointed paid public officers within the protection of the workmen's compensation act, only such officers are brought under its provisions as are connected with or engaged in hazardous occupations of the same general character as those mentioned therein. *Moore v. Industrial Accident Fund*, 80 M 136, 137, 259 P 825.

When Employment Not "Casual"

Employment is not "casual," within the meaning of the workmen's compensation act, in the sense that injuries sustained during the course of such employment are not compensable, if the employment was in the usual course of trade or business of the employer. *Industrial Acc. Board v. Brown Bros. L. Co.*, 88 M 375, 380, 292 P 902.

References

Bruce v. McAdoo, 65 M 275, 289, 211 P 772; *Black v. Northern Pac. Ry. Co.*, 66 M 538, 547 et seq., 214 P 82; *Industrial Acc. Board v. Brown Bros. Lumber Co.*, 88 M 375, 380, 292 P 902; *Clark v. Olson*, 96 M 417, 425, 31 P 2d 283.

References

Nicholson v. Roundup Coal Min. Co. et al., 79 M 358, 374, 257 P 270.

2864. "Injury" to include death. "Injury" means and shall include death resulting from injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R. C. M. 1921.

2865. "Beneficiary" defined. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years, or if no surviving wife or husband then a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years; provided, however, that no invalid child over the age of eighteen years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R. C. M. 1921; amd. Sec. 4, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

A surviving husband incapable of supporting himself, and living with or legally entitled to be supported by the deceased wife at the time of the injury sustained by the latter in an employment covered

by the workmen's compensation act and from which injury she died, is a beneficiary under the provisions of the act. *Kearney v. Industrial Acc. Board*, 90 M 228, 233, 1 P 2d 69.

References

Cited or applied as section 6 (1), chapter 96, laws of 1915, in *Morgan v. Butte Central Min. etc. Co.*, 58 M 633, 639, 194 P 496; *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 122, 155, 269 P 403; *Betor v. National Biscuit Co.*, 85 M 481, 484, 280 P 641; *Cogdill v. Aetna Life Ins. Co. et al.*, 90 M 244, 2 P 2d 292.

2866. "Major dependent" defined. "Major dependent" means if there be no beneficiary as defined in the preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of his injury, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2866, R. C. M. 1921; amd. Sec. 5, Ch. 121, L. 1925; amd. Sec. 1, Ch. 58, L. 1935.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Compensation How Determined

Whether a claimant for compensation is dependent upon the earnings of an injured employee and the extent of the dependency are questions determinable as of the date of the accident to the latter, and the dependent's rights are fixed as of that date under the conditions then shown to exist. *Edwards v. Butte & Superior Mining Co.*, 83 M 122, 125 et seq., 270 P 634.

Id. Held, that the mother of a workman whose injuries received in the course of his employment resulted in his death was wholly dependent upon his earnings at the time of the accident, where it appeared that the monthly living expenses of claimant, a widow with two minor children attending school, were \$100, that her only income aside from his earnings consisted of a pension of \$16 per month and a sum of money intermittently earned by one of the children in selling papers occasionally, amounting to \$7 a week, and that the state of her health made it im-

possible for her to secure employment; held, further, that she, as a major dependent, was entitled to compensation at the maximum rate.

Dependency Question of Fact

The question of a claimant's dependency upon the earnings of an injured employee is one of fact and where resolved by the industrial accident board in favor of the claimant, its finding, if based on substantial evidence, will not be disturbed on appeal. *Edwards v. Butte & Superior Mining Co.*, 83 M 122, 125 et seq., 270 P 634.

To avail one's self of the benefit of the workmen's compensation act, actual dependency of the claimant upon the decedent is an indispensable requisite; the dependency which must exist does not include the maintenance of others whom the dependent is under no legal obligation to maintain or contributions which merely enable the donee to accumulate money; and one may not be said to be a dependent who has sufficient means at hand for supplying present necessities, judging those according to the class and position in life of the alleged dependent. *Betor v. National Biscuit Co.*, 85 M 481, 485, 280 P 641.

Extent of Compensation

Under the workmen's compensation act, a major dependent (father or mother) is

entitled to compensation for injuries to a son resulting in death, only to the extent of his or her actual dependency upon the earnings of decedent. *Edwards v. Butte & Superior Mining Co.*, 83 M 122, 125 et seq., 270 P 634.

Quaere

Does the provision of this section defining "major dependent" as "the father and mother, or the survivor of them, if actually dependent upon the deceased" etc., contemplate that both, and not one

only, shall constitute the "major dependent," or may the wife, the husband still living, claim as such dependent? *Betor v. National Biscuit Co.*, 85 M 481, 485, 280 P 641.

References

Cited or applied as section 6 (m), chapter 96, laws of 1915, in *Morgan v. Butte Central Min. etc. Co.*, 58 M 633, 639, 194 P 496; *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 152, 155, 269 P 403.

2867. "Minor dependent" defined. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding sections the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of his injury. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2867, R. C. M. 1921; amd. Sec. 6, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

2868. "Invalid" defined. "Invalid" means one who is physically or mentally incapacitated.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R. C. M. 1921.

References

Cited or applied as section 6 (o), chap-

References

Cited or applied as section 6 (n), chapter 96, laws of 1915, in *Morgan v. Butte Central Min. etc. Co.*, 58 M 633, 639, 194 P 496.

2869. "Child" defined, to include whom. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R. C. M. 1921.

2870. "Injury" or "injured" defined. "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Disease Aggravated or Accelerated by Accident

Held, that the death of a coal miner who was predisposed to heart disease, from shock while coming from work in the mine in which the temperature was very high and passing through an air course into which ice-cold air was being forced by means of a fan, rendering the temperature therein very low, was due

to an "industrial" accident arising out of and in the course of his employment. *Nicholson v. Roundup Coal Min. Co. et al.*, 79 M 358, 374, 257 P 270.

Id. Though death or injury resulting from disease and not proximately caused by an accident arising out of and in the course of an employment is not compensable under the workmen's compensation act, the fact that the employee at the time was suffering from disease does not preclude compensation if the disease was aggravated or accelerated by the accidental injury.

A workman is entitled to compensation under the workmen's compensation act when a previously existing latent condi-

tion or disease, not disabling, is aggravated or accelerated by some fortuitous event occurring in the course of his employment, which produces disability. *Murphy v. Industrial Accident Board*, 93 M 1, 10, 16 P 2d 705.

2871. The singular and plural include both. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2871, R. C. M. 1921.

2872. Masculine includes all genders. Wherever the masculine gender is used, the feminine and neuter shall be included.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2872, R. C. M. 1921.

2873. "Physician" to include "surgeon." The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession in this state.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R. C. M. 1921.

2874. "Week" defined. "Week" means six working days, but includes Sundays.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2874, R. C. M. 1921.

2875. "Wages" defined. "Wages" mean the average daily wages received by the employee at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2875, R. C. M. 1921.

2876. "Wife" or "widow" defined. "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Under this section, compensation for

injury to the husband may be awarded to a wife or widow only if at the time of the injury she was legally entitled to his support, i.e., if at that time she could have compelled him, under the laws of the state, to support her. *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 152, 156 et seq., 269 P 403.

2877. "Husband" or "widower" defined. "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

A surviving husband incapable of sup-

porting himself, and living with or legally entitled to be supported by the deceased wife at the time of the injury sustained by the latter in an employment covered by the workmen's compensation act and from which injury she died, is a beneficiary under the provisions of this section. *Kearney v. Industrial Acc. Board*, 90 M 228, 233, 1 P 2d 69.

2878. "Board" defined. "Board" means the industrial accident board of the state of Montana.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R. C. M. 1921.

2879. "Commissioner" defined. "Commissioner" means one of the members of the industrial accident board.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2879, R. C. M. 1921.

2880. "Appointed member of the board" defined. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2880, R. C. M. 1921.

2881. "Order" defined. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R. C. M. 1921.

2882. "General order" defined. "General order" shall mean and include such order made under the safety provisions of this act as applies generally throughout the state to all persons, employments, or places of employment, or employees working in such places of employment classed as hazardous in this act.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2882, R. C. M. 1921.

2883. "Local order" defined. "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the industrial accident board has jurisdiction.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2883, R. C. M. 1921.

2884. "Pay-roll" defined—estimate to establish pay-roll. "Pay-roll," "annual pay-roll" or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly pay-roll for the current year; provided, that an estimate may be made by the board for any employer starting in business where no average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R. C. M. 1921.

2885. "Year" defined. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth day of the succeeding June.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R. C. M. 1921.

2886. "Public corporation" defined. "Public corporation" means the state, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

History: En. Sec. 6, Ch. 96, L. 1915; R. C. M. 1921) as an entirety, see references under section 2816.
re-en. Sec. 2886, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., M 191, 194, 286 P 408.

2887. "Insurer" defined. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R. C. M. 1921.

2888. "Casual employment" defined. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Defendant company's business was that of generating and disposing of electric power. A watchman at its plant employed a miner to dig a well to secure water for use at the watchman's dwelling-house, and was killed while doing so. The company had elected not to come under the workmen's compensation act. Held, that the employment of decedent was not in the usual course of business of the company but was casual in its nature. *Miller v. Granite County Power Co. et al.*, 66 M 368, 213 P 604.

Employment is not "casual" within the meaning of the workmen's compensation act (this section and secs. 2837 and 2863, R. C. M. 1921), in the sense that injuries sustained during the course of such employment are not compensable, if the employment was in the usual course of trade or business of the employer. *Industrial Acc. Board v. Brown Bros. Lumber Co.*, 88 M 375, 292 P 902.

Id. An injury is received in the course of employment, under the above rule, when it occurs while the workman is doing the duty which he is employed to perform, though the employment be but temporary or casual.

Id. A truck driver was directed by his employer to deliver a load of cement in

a neighboring town; on his return the truck became mired in a mud-hole from which, without help, he was unable to extricate it; he so informed the employer by phone, who advised him that the truck was needed in his business and to procure help. The person procured to assist him was injured in an attempt to extricate the truck. Held, under the above rules, that under the circumstances the helper was employed to work for the truck driver's employer in the course of the latter's business, that the fact that the helper's employment was but temporary or casual was, therefore, of no importance, and hence that the injury sustained by the helper was compensable under the provisions of the workmen's compensation act.

Where a dentist also operated for gain a large apartment house, in the construction of an addition to which plaintiff employee was injured, the former's contention, in an action for damages, that the latter's employment was "casual," i.e., not in the usual course of trade, business or profession of defendant, and that therefore the provision of section 2836, R. C. M. 1921 (workmen's compensation act), making unavailable certain defenses to an employer, did not apply to him (sec. 2837, R. C. M. 1921), held not maintainable, since a person may be engaged in more than one business, trade or profession; the building of the addition to the apartment house having been in furtherance of defendant's apartment house business, plaintiff's employment was in the usual course of that business. *Nelson v. Stukey*, 89 M 277, 300 P 287.

2889. "Plant of the employer" includes what. "The plant of the employer" shall include the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Held, that where a railroad company delivered empty cars and transported loaded ones over a spur track constructed to a point near a coal mine, and the portion of the track where the coal company

placed loaded cars was indispensable to the conduct of its business, and one of the latter company's employees was injured while attempting to set a defective brake on a loaded car which he was moving while in the course of his employment, the injury occurred at the "plant" of his employer, entitling him to compensation. *Black v. Northern Pac. Ry. Co.*, 66 M 538, 545, 214 P 82.

References

Bruce v. McAdoo, 65 M 275, 289, 211 P 722.

2890. "Independent contractor" defined. "An independent contractor" is one who renders service in the course of an occupation, repre-

senting the will of his employer only as the result of his work, and not as to the means by which it is accomplished.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2890, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

An "independent contractor" (excluded from the benefits of the workmen's compensation act), generally speaking, is one employed to perform work on condition that he is free from the control of the employer as respects the manner in which the details thereof are to be executed. *Nelson v. Stukey*, 89 M 277, 300 P 287.

Id. A building construction foreman who was paid a daily wage with a promise of

two per cent commission if he would speed operations and the cost of the building would not exceed a stated amount, and who was subject to the will and control of the owner as to the means of accomplishing the work, the latter exercising general supervision and issuing orders to the workmen with power in both, however, to hire and discharge men, held not to have been an independent contractor within the meaning of the workmen's compensation act.

Question of Law

It is only where the evidence is reasonably susceptible of but a single inference that the question whether one is an employee or independent contractor becomes one of law for the court's decision. *Nelson v. Stukey*, 89 M 277, 300 P 287.

2891. Compensation to children, brothers and sisters and invalid children—when ceases. In computing compensation to children and to brothers and sisters, only those under eighteen years of age, or invalid children over the age of eighteen years, shall be included, and in case of invalid children, only during the period in which they are under that disability, all within the maximum limitations elsewhere in this act provided, after which payment on account of such person or persons shall cease. Compensation to children, or brothers or sisters, except invalids, shall cease when such persons reach the age of eighteen years and in all cases shall cease when such person marries.

History: En. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2891, R. C. M. 1921; amd. Sec. 7, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

2892. When compensation to beneficiaries, major or minor dependents, or widow ceases. If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent or such widow or widower to compensation under this act shall cease.

History: En. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

In determining the amount of a lump sum settlement under section 2926, R. C. M. 1921, the Industrial Accident Board must ascertain the present worth of the claimant's right to compensation, taking into consideration his expectancy of life, and in the case of a widow the added contingency of remarriage, the happening of

References

Cited or applied as section 7 (a), chapter 96, laws of 1915, in *Morgan v. Butte Central Min. etc. Co.*, 58 M 633, 639, 194 P 496.

either contingency destroying the right to continued monthly payments, and therefore the right of converting them into a lump sum. *Cogdill v. Aetna Life Ins. Co.* et al., 90 M 244, 252, 2 P 2d 292.

The widow of a decedent workman and her two minor children were his beneficiaries under the provisions of the workmen's compensation act. She remarried and thereafter made application for a lump sum settlement of the amounts still remaining due, in the form of a letter, signing it in her name as it was before remarriage. The board granted the request. In an action by the guardian of the minors appointed after the death of

the mother to recover the amount involved in the lump sum settlement on the ground that the board acted without authority in making it, held, that the mother at the time she signed the application for conversion, having then remarried, was no

longer a beneficiary, rendering the action of the board void in the absence of an application for conversion signed by a beneficiary. *Davis v. Industrial Accident Board*, 92 M 503, 509, 15 P 2d 919.

2893. Compensation not paid to non-resident major or minor dependents. No compensation under this act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

History: En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2893, R. C. M. 1921.

2894. Compensation to beneficiary not residing in United States. Except as otherwise provided by treaty, no compensation in excess of fifty per centum (50%) of the compensation provided in this act shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any non-resident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or non-resident, from partaking of the benefit of such law in the same degree as herein extended to non-resident beneficiaries.

History: En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2894, R. C. M. 1921.

2895. Compromise with non-resident. Nothing in the preceding section shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum (50%) of the compensation provided in this act, upon the approval of the board of such compromise settlement.

History: En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2895, R. C. M. 1921.

2896. No compensation to non-resident beneficiaries until when. Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

History: En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R. C. M. 1921.

2897. Payment to non-resident beneficiaries made to whom. Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul, or consular agent within the United States, representing the country in which such non-resident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the board, as the case may be.

History: En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R. C. M. 1921.

2898. Compensation paid to parent or guardian. Where payment is due to a child under eighteen years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian,

as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2898, R. C. M. 1921; amd. Sec. 8, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

The fact that, where a widow and child are beneficiaries under the workmen's compensation act, the compensation due to both may be paid to the former does not authorize treatment of the entire amount due them as belonging to the mother alone, nor conversion thereof into a lump sum at the latter's request, an undivided portion thereof belonging to, and being dedicated to the support of, the child. *Cogdill v. Aetna Life Ins. Co. et al.*, 90 M 244, 257, 2 P 2d 292.

The widow of a decedent workman and her two minor children were his beneficiaries under the provisions of the workmen's compensation act. She remarried and thereafter made application for a lump sum settlement of the amounts still

remaining due, in the form of a letter, signing it in her name as it was before remarriage. The board granted the request. In an action by the guardian of the minors appointed after the death of the mother to recover the amount involved in the lump sum settlement on the ground that the board acted without authority in making it, held, that the mother at the time she signed the application for conversion, having then remarried, was no longer a beneficiary, rendering the action of the board void in the absence of an application for conversion signed by a beneficiary. *Davis v. Industrial Accident Board*, 92 M 503, 508 et seq., 15 P 2d 919.

Id. Where, after remarriage of their mother, minors are the sole beneficiaries of a decedent workman under the workmen's compensation act, the only person authorized to sign an application for conversion of the monthly payments into a lump sum settlement is their guardian appointed under the general statutes relating to guardians (secs. 5868-5889), impliedly intended by the legislature to apply in such a situation.

2899. Claims must be presented within what time. In case of personal injury or death, all claims shall be forever barred unless presented in writing under oath to the employer, the insurer, or the board, as the case may be, within twelve months from the date of the happening of the accident, either by the claimant or some one legally authorized to act for him in his behalf.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1935.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Failure of Employer to File Answer Where Claim Not Filed—Assertion That Defense Waived Without Merit

Where claimant for compensation did not file his claim within the time required by this section, defendant employer was not required to file an answer or state a defense orally before the industrial accident board, and therefore claimant's assertion that by such failure the employer waived its right to make defense has no merit. *Williams v. Anaconda Copper Min. Co.*, 96 M 204, 207 et seq., 29 P 2d 649.

Operation and Effect

Held, that the provision of this section

making it incumbent upon a claimant for compensation to present his claim in writing under oath to the employer, insurer or the industrial accident board, within six months after the accident, or it "shall be forever barred," is mandatory, and that the liberality of construction enjoined by the act holding that because of delay in transmission of papers to and from a foreign country, where the widow of decedent employee resided, presentation of the claim after the expiration of the six-months' period was timely. *Chmielewska v. Butte & Superior Min. Co.*, 81 M 36, 41 et seq., 261 P 616.

Compliance with the provisions of this section, requiring an injured workman seeking compensation under the workmen's compensation act to present his claim within six months from the date of the happening of the accident, is indispensable to the existence of the right to maintain proceedings to compel payment. *Williams v. Anaconda Copper Min. Co.*, 96 M 204, 207 et seq., 29 P 2d 649.

When Estopped from Relying on Limitation

Held, in an action by a claimant under the workmen's compensation act against the insurance carrier of his employer to recover compensation for injuries sustained in the course of his employment, in which the defense was that the claim was barred by this section because not filed within the six months' period provided for therein, that under the doctrine of equitable estoppel defendant was barred from asserting the limitation by the course of conduct of a local insurance agency, clothed with ostensible authority by defendant in handling a prior claim by plaintiff, in repeatedly advising him that his

claim would be taken care of, by sending claimant to a physician for the purpose of procuring an X-ray, telling him that a representative of the insurer was coming to look into the claim, who however never did come, etc., all of which justified the claimant in believing that a written claim would not be required, he not being advised to the contrary until the time for filing it had expired. *Lindblom v. Employers' etc. Assur. Corp.*, 88 M 488, 492, 295 P 1007.

References

Maki v. Anaconda Copper Min. Co., 87 M 314, 319 et seq., 287 P 170, *State v. Industrial Acc. Board et al.*, 94 M 386, 393, 23 P 2d 253.

2900. Exception in case of minors and incompetents as to period of limitation. No limitation of time as provided in the preceding section or in this act shall run as against any injured workman who is mentally incompetent and without a guardian or an injured minor under eighteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided in the preceding section, shall begin to run on the date of appointment of such guardian or when such minor arrives at the age of eighteen years.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R. C. M. 1921; amd. Sec. 9, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Under this section, the limitation of six months from the date of an industrial accident within which an injured workman must file his claim for compensation does not apply where the claimant was mentally incompetent for some time there-

after; under such conditions the statute does not begin to run until he regains his competency. *Maki v. Anaconda Copper Min. Co.*, 87 M 314, 320, 287 P 170.

Id. Held, that the provision of this section, that no limitation of time "as provided in the preceding section (2899, R. C. M. 1921) or in this act" (for presentation in writing of a claim for compensation) shall run against a workman while mentally incompetent, applies as well to the requirement of section 2933, R. C. M. 1921, with reference to service of notice of injuries received upon the employer or insurer.

2900.1. Time for filing claim in case of injured public officers. Any public officer connected with, or engaged in, a hazardous occupation, and who has been injured at any time since August 1, 1932, and any person who has been injured at any time since August 1, 1932, and who, when such injury occurred, was a public officer connected with, or engaged in, a hazardous occupation, shall have not to exceed three years from the date of the happening of the accident resulting in such personal injury to him, to present his verified claim to his employer, the insurer, or the industrial accident board, as the case may be, under the workmen's compensation act. Any claim not presented within such time shall be forever barred.

History: En. Sec. 1, Ch. 101, L. 1935.

2901. Employer liable when lets work to other than independent contractor. Where any employer procures any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business

of such employer, then such employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2901, R. C. M. 1921.

2902. Presumption when employer lets work by contract. Where any employer procures work to be done as specified in the preceding section, such contractor and his employees shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2902, R. C. M. 1921.

2903. When contractor performing casual employment becomes the employer. Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this act.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2903, R. C. M. 1921.

2904. Work to be paid for in property other than money—wages. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R. C. M. 1921.

2905. Compensation in case of death of employee—determination of beneficiary, etc. If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary, or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during or for which compensation was paid for the injury.

If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R. C. M. 1921.

R. C. M. 1921) as an entirety, see references under section 2816.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

Goodwin v. Elm Orlu Min. Co. et al., 83 M 152, 155, 269 P 403.

2906. Examination of employee by physician—request or order for—physician may testify. Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the board, or any member or examiner, or referee thereof.

The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination, or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the board, who shall make or be present at any such examination, may be required to testify as to the results thereof.

History: En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R. C. M. 1921.

Ins. Co. et al., 95 M 186, 187 et seq., 26 P 2d 175.

Operation and Effect

The provision of this section requiring a claimant under the workmen's compensation act to submit to examination by a physician from time to time at the request of employer or insurer, though mandatory, at the peril of having his compensation suspended for noncompliance, held not self-executing. *Burns v. Aetna Life*

Id. Where a woman claimant under the workman's compensation act whose hand had been injured in a laundry had submitted herself to a number of examinations by physicians, but refused to go to a hospital for a period of from four to six days for the purpose of making experiments as to the effect of hot water on the injured hand, the court properly held that the demand was unreasonable.

2907. Contracts or agreements for hospital benefits, conditions governing. Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 2917, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

Such hospital contract or agreements must provide for medical, hospital and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

No assessment of employees for such hospital contracts or benefits shall exceed one dollar (\$1.00) per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of one dollar (\$1.00) per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.

No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent

of this act to provide that where hospitals are maintained by employers, such hospitals shall be no more than self-supporting from assessments of employees, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employees shall be paid in full to such hospital without deduction by the employer. All contracts provided for herein shall be subject to the provisions of section 2917, in so far as the same relates to cases of inadequate medical and hospital facilities. Whenever, in the opinion of the board, it is necessary for an employee to have specialized medical and hospital service not furnished by the contracting hospital or physician the industrial accident board is authorized to direct that such specialized medical and hospital treatment be given, and to pay for the same with a properly drawn warrant on the industrial accident fund, not exceeding the sum of three hundred dollars (\$300.00), where the workman is under plan three and the insurance carrier under plans one and two, provided, however, that this section shall apply only in cases where the average number of employees paying a monthly fee on the hospital and medical contract is less than two hundred and fifty employees.

All contracts mentioned herein shall be filed with the board, which shall have full power to approve or disapprove any such contract, and no payment shall be legally collectable under any such contract or incidental thereto until approval thereof by the board.

History: En. Sec. 14, Ch. 96, L. 1915; re-en. Sec. 2907, R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

A contract entered into between an employer of labor and a hospital in conformity with this section, under which the hospital was bound to provide medical and surgical attendance to the employee for sickness contracted during his employment, except where chargeable to his own vice, as well as for injuries arising out of and in the course of the employment, must be construed in the light of the true intent and purposes of the act, which became a part of it. *Murray Hospital v. Angrove*, 92 M 101, 110 et seq., 10 P 2d 577.

Id. Contract between an employer, working under plan No. 1 of the workmen's compensation act, for hospitalization of his employees pursuant to this section, held not open to the charge that whereas under companion section 2917, R. C. M. 1921, hospitalization is intended to be free, under the contract the employer was en-

abled to reap a profit, this section, the provisions of which were substantially followed in the contract, in effect providing that the employer shall not retain, nor have returned to him by the hospital, any part of the money withheld from the wages of the employees for hospital purposes, and where the employer maintains his own hospital, it shall be no more than self-sustaining.

Id. Under the rule that the provisions of the workmen's compensation act must be liberally construed, held that an injury sustained by an employee while on his way to work constitutes "sickness" in its popular significance, i.e., an affection of the body which deprives it temporarily of its power to fulfill its usual functions, within the meaning of this section, authorizing a contract between the employer and a hospital for medical attendance to employees, *inter alia*, for sickness contracted during their employment.

References

London G. & A. Co., Ltd. v. Indus. Acc. Bd., 82 M 304, 266 P 1103; *Herberson v. Great Falls Wood & Coal Co.*, 83 M 527, 273 P 294; *Landeon v. Toole County Refining Co.*, 85 M 41, 277 P 615.

2908. Hospitals to be under supervision of board. Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall, from time to time,

make reports of such services, attendances, treatments, receipts, and disbursements as the board may require.

History: En. Sec. 14, Ch. 96, L. 1915; re-en. Sec. 2908, R. C. M. 1921.

2909. Liability for treatment or malpractice in case of hospital service.

Neither an employer, an insurer, nor the board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act, the merits of such action shall be investigated by the industrial accident board, and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending.

History: En. Sec. 14, Ch. 96, L. 1915; re-en. Sec. 2909, R. C. M. 1921.

2910. Questions of law in certain actions. In any action to recover damages for any act connected with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, the question of whether or not due care was given by the defendants shall be a question of law for the court.

History: En. Sec. 15, Ch. 96, L. 1915; re-en. Sec. 2910, R. C. M. 1921.

2911. Who liable for injuries under the different plans of act, and in what amounts. Every employer who shall become bound by and subject to the provisions of compensation plan number one, and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two, and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R. C. M. 1921.

Injury Arising Out Of and in the Course of Employment

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

The phrase "injury arising out of and in the course of his employment," means that to warrant payment of compensation, the facts must disclose that the injury or death, as the case may be, resulted from an industrial accident, arising out of and in the course of the employment. These terms are employed conjunctively, and not disjunctively, and the burden of proof is upon the claimant to establish, by a preponderance of the evidence, that the three of these conditions are met. *Wiggins v. Industrial Accident Board*, 54 M 335, 342, 170 P 9.

Act of God

The terms of the workmen's compensation act are sufficiently comprehensive to include injury resulting from an act of God; thus, death resulting to an employee of a county, from lightning, while he is engaged at work on a public road, is death resulting from an industrial accident, but there can be no recovery therefor without proof that the injury causing death arose "out of" and "in the course of" the employment. *Wiggins v. Industrial Accident Board*, 54 M 335, 342, 170 P 9.

Id. An injury to a workman arises "out of" his employment if it is the result of exposure to a hazard peculiar to the employment, or of exposure to more than the

normal risk to which the people of the community generally are subject.

The workmen's compensation act, in so far as it provides compensation to an injured employee for injuries received from an accident growing out of and in the course of his employment, is exclusive of all other remedies. *Wirta v. North Butte Mining Co. et al.*, 64 M 279, 285, 210 P 332.

Id. Held, that injuries to a miner caused by smoke and gas incident to a fire in the mine, and sustained by him after he had ceased working and while he was compelled to remain therein until rescued, arose out of and in the course of his employment, and that, having agreed to be bound by the provisions of the workmen's compensation act, he was bound by the provision making the compensation allowed by it exclusive of all other remedies, and was therefore barred from bringing an independent action for damages.

Where an industrial accident occurs while an employee is going to or from work on the premises of his employer and using ways of ingress and egress furnished by the latter, without deviation for purposes of his own, the injury suffered by reason of the accident will be held to arise out of and in the course of his employment. *Nicholson v. Round-up Coal Min. Co. et al.*, 79 M 358, 374, 257 P 270.

Id. Held, that the death of a coal miner who was predisposed to heart disease, from shock while coming from work in the mine in which the temperature was very high and passing through an air course into which ice-cold air was being forced by means of a fan, rendering the temperature therein very low, was due to an "industrial" accident arising out of and in the course of his employment.

If there is a causal connection shown between the injury of an employee claiming compensation under the workmen's compensation act and the business in which he was employed substantially contributing to the injury, liability exists, and the fact that the injury occurred on a public road or on premises adjacent to those of his employer is not alone conclusive against liability, nor is the fact that the danger to which the employee was exposed was one to which the general public was likewise exposed, it being sufficient if the employee was peculiarly subjected to the danger resulting in the accident by reason of his employment. *Herberson v. Great Falls Wood & Coal Co.*, 83 M 527, 534, 273 P 294.

Id. It was the duty of an employee of a coal company each morning before the arrival of others employed at the coal yard to open a gate in the fence surrounding it; for that purpose he had been en-

trusted with a key. To reach the gate it had been his custom with the knowledge of his employer and without objection on the part of the employer, after alighting from a street-car, to cross premises adjacent to those of the employer. Alighting from the car on the morning of the accident, some 900 feet from the gate, and moving toward it, he was struck by an automobile, his injuries resulting in death the following day. Held, under the last above rule, that there was a causal connection between his injuries and the duties imposed upon him by his employer, and that the claimant, his widow, was entitled to compensation.

To entitle a workman to compensation under this act he must be able to prove by a preponderance of the evidence the following essential elements: (1) the injury must have resulted from an industrial accident (2) arising out of and (3) in the course of his employment; the term arising "out of" presupposing a causal connection between the employment and the injury, and the words "in the course of" referring to the time, place and circumstances under which the accident took place. *Landeem v. Toole County Refining Co.*, 85 M 41, 277 P 615.

The workmen's compensation act is not framed on the theory of life insurance for employees, but on that of compensation for injuries sustained in the course of employment, and the burden rests upon the claimant to establish by a preponderance of the evidence that the injury or death proximately resulted from an industrial accident arising out of and in the course of employment. *Kerns v. Anacosta Copper Min. Co.*, 87 M 546, 289 P 563.

Id. A laborer about an ore sampler had for a number of years been suffering from a large ulcer on the front of one of his legs between the knee and the ankle. Physicians grafted skin on the denuded area of the ulcer successfully and he returned to work, the healed area being bandaged. A week thereafter he died from blood poisoning. His widow, asserting that death was due to an injury sustained by decedent shortly after returning to work in that a rock had struck the healed ulcerous area causing an abrasion through which the infection germs had entered into the blood stream, made claim for compensation under the workmen's compensation act. Both the industrial accident board and the district court on appeal rejected the claim. Held, that the evidence warranted the conclusion that decedent did not sustain an injury to the leg as claimed, but that if he did, such injury was not the proximate cause of his death, but, as found by both the board and district court, the blood poisoning was due

to infection from the ulcer prior to the time of the alleged injury.

Where an employee, while on his way to work, was struck by an automobile, his injury did not arise out of and in the course of his employment, and therefore he was neither entitled to compensation nor to hospitalization under the general provisions of the workmen's compensation act. *Murray Hospital v. Angrove*, 92 M 101, 10 P 2d 577.

When to Determine Who Is a Dependent

In determining whether a claimant was a dependant, the board is not concerned with problematical future conditions, but only with the condition of the claimant at the time of the injury to the decedent. *Morgan v. Butte Central Min. etc. Co.*, 58 M 633, 644, 194 P 496.

References

Black v. Northern Pac. Ry. Co., 66 M 538, 546, 214 P 82.

2912. Compensation for injury producing temporary total disability.

For an injury producing temporary total disability. Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifteen dollars (\$15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of seventeen dollars (\$17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more brothers and, or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of eighteen dollars (\$18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to the maximum compensation of nineteen dollars (\$19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty dollars (\$20.00) per week; where the injured employee has a wife and four or more children, or five or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66-2/3%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars (\$21.00) per week; and subject in all cases to a minimum compensation of eight dollars (\$8.00) per week, and subject to change when the number of beneficiaries or dependents decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred weeks (300) from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919; re-en. Sec. 2912, R. C. M. 1921; amd. Sec. 10, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929.

R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

The period of temporary total disability for which compensation is prescribed by this section is the temporary period im-

mediately after the accident during which the employee is totally incapacitated for work by reason of the illness attending the injury—the healing period; if complete recovery then ensues, compensation ceases; if that total disability proves permanent, payment is governed by section 2913; if only partial, he is also entitled to compensation provided for in such a case within the limitations prescribed. Dosen

v. East Butte Copper Min. Co., 78 M 579, 600 et seq., 254 P 880.

References

Sullivan v. Anselmo Mining Corp. et al., 82 M 543, 554, 268 P 495; Sykes v. Republic Coal Co., 94 M 239, 248, 21 P 2d 732; Woin v. Anaconda Copper Min. Co., 99 M 163, 43 P 2d 663.

2913. Compensation for injury producing total disability permanent in character. For an injury producing total disability permanent in character. Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury subject to a maximum compensation of fifteen dollars (\$15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of seventeen dollars (\$17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more brothers and, or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of eighteen dollars (\$18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of nineteen dollars (\$19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty dollars (\$20.00) per week; where the injured employee has a wife and four children, or five or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66-2/3%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars (\$21.00) per week; and subject in all cases to a minimum compensation of eight dollars (\$8.00) per week, and subject to change when the number of beneficiaries or dependents decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding five hundred (500) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919; re-en. Sec. 2913, R. C. M. 1921; amd. Sec. 11, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Definition

Disability, within the meaning of the workmen's compensation act, is not total where it appears that the claimant's earning power is not wholly destroyed and he is still capable of performing remunerative employment; in such a case he must make an active effort to procure such work as

he can still perform; and one alleging that he is totally incapacitated from obtaining remunerative employment has the burden of proving it by satisfactory evidence. *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 600 et seq., 254 P 880.

Maximum Weekly Compensation Allowable

Under this section, the maximum compensation allowable for permanent total disability is \$15; hence an allowance at the rate of \$18 per week was error. *Moffett v. Bozeman Canning Co., et al.*, 95 M 347, 361, 26 P 2d 973.

Nature of Disability and Compensation to Which Claimant Entitled

Where a coal miner in the course of his employment lost his left eye, receiving therefor full compensation under the provisions of the workmen's compensation act, and

nine years later while working at the same occupation under a different employer again suffered an accident destroying the vision of his right eye, thus rendering him totally blind, he was, under a liberal construction of the act, entitled to compensation as for a total permanent disability for a period of 500 weeks, less payments previously received for 200 weeks, as against the contention that under the act he was only entitled to compensation for the loss of one eye. *McDaniel v. Eagle Coal Co. et al.*, 99 M 309, 312, 43 P 2d 655.

References

Novak v. Industrial Accident Board, 73 M 196, 200, 235 P 754; *Sykes v. Republic Coal Co.*, 94 M 239, 248, 21 P 2d 732; *Moffett v. Bozeman Canning Co. et al.*, 95 M 347, 361, 26 P 2d 973; *Woin v. Anaconda Copper Min. Co.*, 99 M 163, 43 P 2d 663.

2914. For partial disability—for an injury producing partial disability. Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifteen dollars (\$15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of seventeen dollars (\$17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more brothers and, or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of eighteen dollars (\$18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of nineteen dollars (\$19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of twenty dollars (\$20.00) per week; where the injured employee has a wife and four or more children, or five or more children residing within the United States who would be entitled to compensa-

tion in case of his death, sixty-six and two thirds per centum ($66\frac{2}{3}\%$) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of twenty-one dollars (\$21.00) per week; not exceeding, however, the maximum compensation allowed in cases of total disability, and not exceeding the total compensation provided in this act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding, however, five hundred (500) weeks in cases of permanent partial disability, and fifty (50) weeks in cases of temporary partial disability, subject to change when the number of dependents decreases.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919; re-en. Sec. 2914, R. C. M. 1921; amd. Sec. 2, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Construing this section, prior to enactment of chapter 121, laws of 1925, held, in connection with other sections of the act, that the maximum compensation for a permanent partial disability caused by injury to an arm from the elbow down is \$12.50 per week for 180 weeks, the amount to be divided into payments extending over a period not exceeding 150 weeks. *Novak v. Industrial Accident Board*, 73 M 196, 200 et seq., 235 P 754.

Construing this section, prior to amendment by chapter 177, laws of 1929, the measure of compensation for a workman's permanent partial disability arising from internal injuries is one-half of the difference between the wages he received at the

time of the accident and the wages he was able to earn thereafter (from time of hearing) paid in weekly installments not to exceed 150 weeks, nor in excess of one-half the maximum compensation allowed in cases of total disability; hence where the total of one-half the difference between the wages earned before the injury and what claimant could thereafter earn for 150 weeks exceeds the total of \$3,750—one-half the maximum compensation allowed for total disability at \$15 per week for 500 weeks—allowance of the excess is illegal. *Sullivan v. Anselmo Mining Corp., et al.*, 82 M 543, 549 et seq., 268 P 495.

Partial disability, permanent in character, by reason of loss of a member of the body, is compensable under the schedule provided in section 2920, while such disability caused by an injury other than the loss of a member is covered by this section. *Sykes v. Republic Coal Co.*, 94 M 239, 248, 249, 21 P 2d 732.

References

Dosen v. East Butte Copper Min. Co., 78 M 579, 600, 254 P 880.

2915. Compensation for injury causing death. For beneficiaries residing within the United States. Where the decedent leaves one beneficiary, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of fifteen dollars (\$15.00) per week; where decedent leaves two beneficiaries, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of seventeen dollars (\$17.00) per week; where decedent leaves three beneficiaries, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of eighteen dollars (\$18.00) per week; where decedent leaves four beneficiaries, sixty-two and one-half per centum ($62\frac{1}{2}\%$) of the wages received at the time of the injury, subject to a maximum compensation of nineteen dollars (\$19.00) per week; where decedent leaves five beneficiaries, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of twenty dollars (\$20.00) per week; where decedent leaves six or more beneficiaries, sixty-six and two-thirds per centum ($66\frac{2}{3}\%$) of the wages received at the time of the injury, subject to a maximum com-

pensation of twenty-one dollars (\$21.00) per week, and subject in all such cases to a minimum compensation of eight dollars (\$8.00) per week.

For beneficiaries residing outside of the United States: Where decedent leaves one beneficiary, forty per centum (40%) of the compensation which would be payable to such beneficiary, if residing within the United States; where decedent leaves two beneficiaries, forty-five per centum (45%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves three beneficiaries, forty-seven and one-half per centum ($47\frac{1}{2}\%$) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves four or more beneficiaries, fifty per centum (50%) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If the decedent leaves no beneficiaries, then compensation shall be payable as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decedent leaves one major dependent, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of fifteen dollars (\$15.00) per week; where decedent leaves two major dependents, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of seventeen dollars (\$17.00) per week.

If the decedent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the date of the happening of the injury, as follows: Where decedent leaves one minor dependent, thirty per centum (30%) of the wages received at the time of the injury; where decedent leaves two minor dependents, thirty-five per centum (35%) of the wages received at the time of the injury; where decedent leaves three or more minor dependents, forty per centum (40%) of the wages received at the time of the injury.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of twenty-one dollars (\$21.00) per week for a period not exceeding four hundred weeks (400) and subject to change, when the number of beneficiaries or dependents decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of dependency.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919; re-en. Sec. 2915, R. C. M. 1921; amd. Sec. 12, Ch. 121, L. 1925; amd. Sec. 14, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Construing prior to amendment by chapter 177, laws of 1929, under the workmen's compensation act as amended by chapter 121, laws of 1925, a major dependent (father or mother) is entitled to compensation for injuries to a son resulting in death, only to the extent of his or her actual de-

pendency upon the earnings of decedent. *Edwards v. Butte & Superior Min. Co.*, 83 M 122, 126, 270 P 634.

Id. Held, that the mother of a workman whose injuries received in the course of his employment resulted in his death was wholly dependent upon his earnings at the time of the accident, where it appeared that the monthly living expenses of claimant, a widow with two minor children attending school, were \$100, that her only income aside from his earnings consisted of a pension of \$16 per month and a sum of money intermittently earned by one of the children in selling papers occasionally, amounting to \$7 a week, and that the state of her health made it impossible for her to secure employment; held, further, that she, as a

major dependent, was entitled to compensation at the maximum rate.

References

Nicholson v. Roundup Coal Min. Co. et

al., 79 M 358, 384, 257 P 270; Cogdill v. Aetna Life Ins. Co. et al., 90 M 244, 252 et seq., 2 P 2d 292.

2916. Providing for additional compensation in case death occurs while employee is drawing or entitled to draw compensation payment. There shall be paid in addition to other compensation, if death due to injury occurs while the employee is drawing or entitled to draw compensation payment, the reasonable burial expenses of the employee, not exceeding one hundred and fifty dollars.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R. C. M. 1921; amd. Sec. 13, Ch. 121, L. 1925.

R. C. M. 1921) as an entirety, see references under section 2816.

References

Herberson v. Great Falls Wood & Coal Co., 83 M 527, 539, 273 P 294.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

2917. Medical and hospital services and such other treatment as approved by the board, to be furnished. During the first six (6) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board, not exceeding in amount the sum of five hundred dollars (\$500.00), unless the employee shall refuse to allow them to be furnished, and unless such employee is under hospital contract as provided in section 2907 of this act.

And it is further provided that when such employee is under a hospital contract as above and when hospital or medical facilities or both are inadequate to the needs of an injured employee in a particular case such injured employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 3, Ch. 196, L. 1921; re-en. Sec. 2917, R. C. M. 1921; amd. Sec. 14, Ch. 121, L. 1925; amd. Sec. 15, Ch. 177, L. 1929; amd. Sec. 2, Ch. 139, L. 1931.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Construing prior to amendment by chapter 139, laws of 1931, under sections 2916, and 2917, as amended by chapter 121, laws of 1925, claimant, in addition to compensation, was entitled to reasonable surgical and hospital service, not exceeding \$500 and burial expenses not in excess of \$150, and denying these both the industrial accident board and the district court on appeal erred. *Herberson v. Great Falls Wood & Coal Co.*, 83 M 527, 539, 273 P 294.

Construing prior to amendment by chapter 139, laws of 1931, since under this section an employer's liability for medical, surgical and hospital service during the first six months after an employee's injury is limited to \$500, an order of the district court on appeal that, it being unable to fix the amount of such service from the record of the industrial accident board before it, defendant should pay the reasonable amount due for such service without fixing the maximum amount, held not open to the complaint that under it defendant could be held chargeable with an unlimited amount. *Landeon v. Toole County Refining Co.*, 85 M 41, 49, 277 P 615.

Where an employee, while on his way to work, was struck by an automobile, his injury did not arise out of and in the course of his employment, and therefore he was neither entitled to compensation nor to hospitalization under the general provisions of the workmen's compensation act (sec.

2917, R. C. M. 1921). *Murray Hospital v. Angrove*, 92 M 101, 108 et seq., 10 P 2d 577.

References

Dosen v. East Butte Copper Min. Co., 78 M 579, 600 et seq., 254 P 880; *London G. & A. Co., Ltd., v. Indus. Acc. Bd.*, 82 M 304, 307 et seq., 266 P 1103.

2918. Compensation from what date paid. Where an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of the preceding section, but if disability continues six weeks, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues three weeks, compensation shall be paid from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R. C. M. 1921; amd. Sec. 3, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

R. C. M. 1921) as an entirety, see references under section 2816.

References

Dosen v. East Butte Copper Min. Co., 78 M 579, 600 et seq. 254 P 880.

2919. Compensation to run consecutively—major and minor dependents not residing in the United States—manner of payment. Compensation, other than medical, surgical, hospital and burial benefits provided shall run consecutively and not concurrently and payment shall not be made for two classes of disability over the same period, provided that no compensation shall be paid to a major or minor dependent who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependent where there be more than one, shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the board.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R. C. M. 1921; amd. Sec. 15, Ch. 121, L. 1925.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Held that the provision of this section, that compensation for all classes of injuries other than such as is provided for medical, surgical and hospital attention, and burial benefits, shall run consecutively and not

concurrently, the payments succeeding one another in regular order, and that payment shall not be made for two classes of disability over the same period, by the use of the word "classes" refer to the four disabilities mentioned in sections 2912-2914, R. C. M. 1921, to-wit: temporary total, permanent total, temporary partial and permanent partial disability. *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 601, 254 P 880.

References

Nicholson v. Roundup Coal Min. Co. et al., 79 M 358, 384, 257 P 270.

2920. Compensation in case of specified injuries. In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, other than that provided in section 2917, unless

the employee is a contributor to a hospital fund or otherwise in this act provided, shall be as follows: Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of fifteen dollars (\$15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of seventeen dollars (\$17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more brothers and, or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of eighteen dollars (\$18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the wages received at the time of the injury, subject to a maximum compensation of nineteen dollars (\$19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of twenty dollars (\$20.00) per week; where the injured employee has a wife and four or more children, or five or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66-2/3%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars (\$21.00) per week; subject to change, when the number of beneficiaries or dependents decreases, and subject in all cases to a minimum compensation of eight dollars (\$8.00) per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder	200 weeks
One arm at the elbow	180 weeks
One arm between wrist and elbow	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof	60 weeks
One thumb at the proximal joint	30 weeks
One thumb at the second distal joint	20 weeks
One first finger and the metacarpal bone thereof	30 weeks
One first finger at the proximal joint	20 weeks
One first finger at the second joint	15 weeks
One first finger at the distal joint	10 weeks
One second finger and the metacarpal bone thereof	30 weeks
One second finger at the proximal joint	15 weeks
One second finger at the second joint	10 weeks
One second finger at the distal joint	5 weeks

One third finger and the metacarpal bone thereof	20 weeks
One third finger at the proximal joint	12 weeks
One third finger at the second joint	8 weeks
One third finger at the distal joint	4 weeks
One fourth finger and the metacarpal bone thereof	12 weeks
One fourth finger at the proximal joint	9 weeks
One fourth finger at the second joint	6 weeks
One fourth finger at the distal joint	3 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	200 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	150 weeks
One leg between the knee and ankle	140 weeks
One foot at the ankle	125 weeks
One great toe with the metatarsal bone thereof	30 weeks
One great toe at the proximal joint	15 weeks
One great toe at the second joint	10 weeks
One toe other than the great toe with the metatarsal bone thereof	12 weeks
One toe other than the great toe at proximal joint	6 weeks
One toe other than the great toe at second or distal joint	3 weeks
One eye by enucleation	120 weeks
Total blindness of one eye	100 weeks
Total loss of hearing, one ear	20 weeks
Total loss of hearing, both ears	120 weeks

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in one accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

This section, providing that in case of loss of a member of the body of an injured employee, the compensation provided shall be "in lieu of any other compensation," aside from medical and hospital services provided for in section 2917, R. C. M. 1921, held to mean that where amputation of a member becomes necessary the compensation provided therefor by this section is exclusive, no further compensation for dis-

ability on that account being allowable, such compensation, however, being, in addition to that theretofore paid him for temporary total disability under section 2912, R. C. M. 1921. *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 603, 254 P 880.

Id. Compensation for permanent partial disability and also for specific loss of the use of a member of the body, under this section, cannot be awarded where both result from the same injury.

Id. An injured employee is in duty bound to make use of every available and reasonable means to make himself whole, so far as possible, and therefore may not, upon being advised by the best medical and surgical talent after many months of treatment that, where the injury was to the lower part of one of his legs, amputation was the only remedy because of an affection of the bone, refuse to submit to the

operation and in the meantime draw compensation as for a partial disability; and if he finally submits thereto, payments made to him from the time he first failed to take the surgeon's advice may properly be deducted from the amount found ultimately due him.

Partial disability, permanent in character, by reason of loss of a member of the body, is compensable under the schedule provided in this section, while such disability caused by an injury other than the loss of a member is covered by section 2914, R. C. M. 1921. *Sykes v. Republic Coal Co.*, 94 M 239, 248, 21 P 2d 732.

Under this section, the compensation allowed an injured workman for the loss of a foot is "in lieu of any other compensation provided by this act," and therefore additional compensation during the "healing period" may not be allowed. *Rom v. Republic Coal Co.*, 94 M 250, 22 P 2d 161.

Id. Under this section, an employee who loses a foot at the ankle is entitled to compensation for the period prescribed, without regard to his ability to return to work within that period.

2921. Hernia cases. A workman, in order to be entitled to compensation for hernia, must clearly prove:

- (1) That the hernia is of recent origin;
- (2) That its appearance was accompanied by pain;
- (3) That it was immediately preceded by some accidental strain suffered in the course of the employment; and,
- (4) That it did not exist prior to the date of the alleged injury.

If a workman, after establishing his right to compensation for hernia, as above provided, elects to be operated upon, a special operating fee of not to exceed one hundred dollars (\$100.00) shall be paid by the employer, the insurer, or the board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2921, R. C. M. 1921; amd. Sec. 4, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Held that this section providing a fee of not to exceed fifty dollars where it becomes necessary to operate on an injured

Where a coal miner in the course of his employment lost his left eye, receiving therefor full compensation under the provisions of the workmen's compensation act, and nine years later while working at the same occupation under a different employer again suffered an accident destroying the vision of his right eye, thus rendering him totally blind, he was, under a liberal construction of the act, entitled to compensation as for a total permanent disability for a period of 500 weeks, less payments previously received for 200 weeks, as against the contention that under the act he was only entitled to compensation for the loss of one eye. *McDaniel v. Eagle Coal Co. et al.*, 99 M 309, 312, 43 P 2d 655.

References

Novak v. Industrial Accident Board, 73 M 196, 200 et seq., 235 P 754; *London G. & A. Co., Ltd., v. Indus. Acc. Bd.*, 82 M 304, 310, 266 P 1103; *Mulholland v. Butte & Superior Min. Co.*, 87 M 561, 569, 289 P 579.

employee for hernia—a section treating specially of hernia alone was not impliedly repealed by section 14 of chapter 121, laws of 1925, (section 2917 of this code) providing generally for surgical service when needed, in an amount not to exceed \$500.00 and that therefore the industrial accident board in allowing a fee of \$100.00 for a hernia operation exceeded its authority granted under this section. *London G. & A. Co., Ltd., v. Indus. Acc. Bd.*, 82 M 304, 307 et seq., 266 P 1103.

2922. Paralysis of limbs considered loss thereof. For the purpose of section 2920, the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of said section, the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R. C. M. 1921.

R. C. M. 1921) as an entirety, see references under section 2816.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Novak v. Industrial Accident Board, 73 M 196, 201, 235 P 754.

2923. Adjustment of compensation in case of further injuries. Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this act, his further compensation shall be adjusted according to the other provisions of this act, and with regard to his past receipt of compensation.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R. C. M. 1921; amd. Sec. 5, Ch. 177, L. 1929.

References

McDaniel v. Eagle Coal Co. et al., 99 M 309, 43 P 2d 655.

2924. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this act have not been reached, adjustments may be made to meet such changed conditions by increasing, diminishing or terminating compensation payments in accordance with the provisions of this act.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R. C. M. 1921; amd. Sec. 6, Ch. 177, L. 1929.

2925. Payments made how. All payments of compensation, as provided in this act, shall be made monthly, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

acting the workmen's compensation act was that the monthly payment plan provided by this section should be the rule, and the lump sum settlement authorized by the next section, the exception. Davis v. Industrial Accident Board, 92 M 503, 507, 15 P 2d 919.

Operation and Effect

The intention of the legislature in en-

2926. Monthly payments converted into a lump sum. The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment and the advisability of such conversion. The board is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the board.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Amount of Lump Sum How Determined

In determining the amount of a lump sum settlement under the above section, the industrial accident board must ascertain the present worth of the claimant's right to compensation, taking into consideration his expectancy of life, and in case of a

widow the added contingency of remarriage, the happening of either contingency destroying the right to continued monthly payments, and therefore the right of converting them into a lump sum. *Cogdill v. Aetna Life Ins. Co. et al.*, 90 M 244, 251 et seq., 2 P 2d 292.

Commutation Where Widow and Child Are Beneficiaries

The fact that, where a widow and child are beneficiaries under the workmen's compensation act, the compensation due to both may be paid to the former (*sec. 2898, R. C. M. 1921*, as amended by chapter 121, laws 1925) does not authorize treatment of the entire amount due them both as belonging to the mother alone, nor conversion thereof into a lump sum at the latter's request, an undivided portion thereof belonging to, and being dedicated to the support of, the child. *Cogdill v. Aetna Life Ins. Co. et al.*, 90 M 244, 251 et seq., 2 P 2d 292.

Id. A widow, aged thirty-six, and child, aged ten years, and seven months, were awarded compensation at the rate of \$17 per week for 400 weeks. After receipt of payment for 24 weeks, the widow petitioned for a partial commutation of the award to enable her to secure medical attention for herself. The industrial accident board granted conversion of payment of the last 78 of the remaining 376 weeks' allowance. Held, that it appearing that the board did not take into consideration the contingency of the remarriage of the widow, nor the fact that in case of remarriage the child would be entitled to the \$15 weekly received by the mother (\$2 being allowed for the child), the board committed error in that for 66 weeks of the 78 embraced in the conversion the child would be deprived thereof on the mother's remarriage.

Deferred Payments

The "deferred payments" which the industrial accident board is authorized by this section to convert into a lump sum payment, mean such payments as would ordinarily become payable in the natural course of events, taking into consideration the expectancy of the beneficiary; commutation may not be made where the weekly compensation sought to be commuted may never exist. *Cogdill v. Aetna Life Ins. Co. et al.*, 90 M 244, 251 et seq., 2 P 2d 292.

Discretion of Board

Under this section, the matter of awarding to an injured employee compensation

by way of lump sum settlement is within the discretion of the industrial accident board, and that discretion will not be interfered with on appeal unless there appears an abuse of it. *Sullivan v. Anselmo Mining Corp. et al.*, 82 M 543, 557, 268 P 495.

By this section, the application of a beneficiary under the workmen's compensation act for conversion of monthly compensation payments into a lump sum payment is addressed to the discretion of the industrial accident board, and on appeal the district court in that behalf may act only in review of the action of the board thereon; therefore, where the beneficiary (widow) had asked for conversion but the board had not acted upon the request at the time the insurance carrier appealed from the award made and the district court heard the appeal upon the record certified by the board, which did not disclose that the board had made investigation as to whether or not the widow's request should or should not be granted, the court exceeded its jurisdiction in directing a lump sum payment. *Landeen v. Toole County Refining Co.*, 85 M 41, 46, 277 P 615.

Since the district court has no original jurisdiction under the workmen's compensation act to entertain the question whether an injured employee shall be allowed to have his weekly payments converted into a lump sum settlement, jurisdiction over that matter being lodged in the industrial accident board, the doctrine of *res adjudicata* may not be invoked by the employer-insurer as to that issue, in defense to a petition for a writ of prohibition to the supreme court to restrain the district court from taking further proceedings under a like writ involving the right of the industrial accident board to hear claimant's application for a lump sum settlement after decision on appeal upholding the award made by the board, where that issue was not, and under the facts could not have been, presented to the district court on appeal. *State v. District Court*, 88 M 400, 404, 293 P 291.

Intent of Legislature

The intention of the legislature in enacting the workmen's compensation act was that the monthly payment plan provided by section 2925, R. C. M. 1921, should be the rule, and the lump sum settlement authorized by this section, the exception. *Davis v. Industrial Accident Board*, 92 M 503, 507, 15 P 2d 919.

2927. Assignment or attachment of payments. No payments under this act shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R. C. M. 1921.

2928. Liability in case of bankruptcy or failure is first lien. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be

due under this act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be prorated with other lienable claims, and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R. C. M. 1921.

2929. Waivers invalid. No agreement by an employee to waive any rights under this act for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R. C. M. 1921.

2930. Misrepresenting pay-roll. Any employer who shall misrepresent to the board the amount of a pay-roll upon which the premiums or assessments under compensation plan number three are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R. C. M. 1921.

2931. Act not to apply to railroads engaged in interstate commerce. The provisions of this act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this act.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R. C. M. 1921.

2932. Duplicate receipts paid for injuries to be filed—statements of medical expenditures. Every employer coming under the provisions of compensation plan number one, and every insurer coming under the provisions of compensation plan number two, shall, on or before the fifteenth day of each and every month, file with the industrial accident board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical, and hospital services, and for the burial of injured workmen.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R. C. M. 1921.

2933. Notice of claims for injuries other than death. No claims to recover compensation under this act for injuries not resulting in death shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer, except as otherwise provided in section 2900; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon

which the injured employee was engaged at the time of the injury shall be equivalent to such service.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R. C. M. 1921; amd. Sec. 7, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Held, that the provision of amended section 2900, R. C. M. 1921, that no limitation of time shall run against a workman while mentally incompetent, applies as well to the requirements of this section with reference to service of notice of injuries received upon the employer or insurer. *Maki v. Anaconda Copper Min. Co.*, 87 M 314, 319 et seq., 287 P 170.

Id. This section provides that no claim for compensation under the workmen's compensation act shall be maintained unless within thirty days after the accident notice, signed by the injured workman, shall be served upon the employer or insurer, actual notice of the accident and injury on the part of the employer, his managing agent or superintendent in charge, however, being equivalent to such

service. Held that the provision is mandatory, and that where no notice was given and the evidence failed to show that the employer, his managing agent or superintendent in charge had actual knowledge, or that information of the injury possessed by a minor official had been imparted by him to either of the three persons mentioned, the injured workman was barred of recovery.

Where the industrial accident board makes a final order, such as that because of the failure of an injured workman to file written notice of the accident resulting in his injury with his employer (insurer) as required by this section, his claim is denied, as distinguishing from an order interlocutory in character over which it, under section 2952, R. C. M. 1921, has continuing jurisdiction, and the claimant fails to appeal therefrom, the matter becomes *res adjudicata* and may not thereafter be reopened. *State v. Industrial Acc. Board et al.*, 94 M 386, 387 et seq., 23 P 2d 253.

References

Williams v. Anaconda Copper Min. Co., 96 M 204, 207 et seq., 29 P 2d 649.

2934. Employers and insurers required to file reports of accidents.

Every employer of labor and every insurer is hereby required to file with the board, under such rules and regulations as the board may, from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the board in such form and such detail as the board shall from time to time prescribe, and shall make specific answers to all questions required by the board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R. C. M. 1921.

2935. Confidential information used, how. No information furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board, in the course of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section, divulges any information, shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2935, R. C. M. 1921.

2936. American experience table of mortality used. Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American experience table of mortality shall be used.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2936, R. C. M. 1921.

2937. Deduction from wages of any part of premium a misdemeanor—hospital contributions. It shall be unlawful for the employer to deduct or

obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R. C. M. 1921.

2938. Hearings and investigations—technical rules. All hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the board.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2938, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Under this section, the primary function of the industrial accident board is

to ascertain the material facts relating to an accident for which compensation is claimed by the injured workman, disregarding the niceties of ordinary court procedure. *Williams v. Anaconda Copper Min. Co.*, 96 M 204, 210, 29 P 2d 649.

References

Sullivan v. Anselmo Mining Corp. et al., 82 M 543, 555, 268 P 495.

2939. Depositions may be taken. The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2939, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

R. C. M. 1921) as an entirety, see references under section 2816.

References

Sullivan v. Anselmo Mining Corp. et al., 82 M 543, 555, 268 P 495.

2940. Powers of board. The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

While the industrial accident board, created as a purely administrative body, exercises many functions that are judicial in character, it is not vested with judicial power, in the sense in which that expression is used in the constitution, wherein

it means the power of a court to decide, to pronounce a judgment, and to carry it into effect, between persons and parties who bring a case before it for decision. *Shea v. North Butte Min. Co.*, 55 M 522, 536, 179 P 499.

Held, that this section vesting in the board power to do all things necessary in the exercise of the jurisdiction conferred upon it by the workmen's compensation act, in addition to those therein provided for, is procedural in character and has nothing to do with the substantive matter of award of compensation; therefore where

the board in reliance upon the authority supposedly conferred by this section "in order to do equity" computed compensation for a permanent partial disability on a percentage basis instead of following the specific provisions of section 2914, R. C. M. 1921, providing the measure of com-

pensation in such cases, it committed error. *Sullivan v. Anselmo Mining Corp. et al.*, 82 M 543, 549, 268 P 495.

References

Sykes v. Republic Coal Co., 94 M 239, 248, 21 P 2d 732.

2941. Powers to issue writs and process—fees for serving. The board, and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2941, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 18 (d), chapter 96, laws of 1915, in *Shea v. North Butte Min. Co.*, 55 M 522, 537, 179 P 499; *Sullivan v. Anselmo Mining Corp. et al.*, 82 M 543, 555, 268 P 495.

2942. Power to administer oaths, certify official acts, issue subpoenas—witness fees and mileage. The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2942, R. C. M. 1921.

2943. Power of district court concerning production of testimony—contempt. The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member

thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

History: En. Sec. 18, Ch. 96, L. 1915;
re-en. Sec. 2943, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Cited or applied as section 18 (f), chapter 96, laws of 1915, in *Shea v. North Butte Min. Co.*, 55 M 522, 537, 179 P 499.

2944. Certificates and certified copies as evidence. Copies of official documents and orders filed or deposited according to law in the office of the board, certified to by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the workmen's compensation act of the state of Montana, is a question for determination, a certificate by a member of the board, or by the secretary under the official seal of the board, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the workmen's compensation act of the state of Montana, shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R. C. M. 1921; amd. Sec. 8, Ch. 177, L. 1929.

2945. Apportionment of costs and disbursements. The costs and disbursements, incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing arising out of cases under Plan No. 3 may be paid from the industrial accident fund.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2945, R. C. M. 1921; amd. Sec. 3, Ch. 139, L. 1931.

2946. Books, records, and pay-rolls to be open to inspection. The books, records, and pay-rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay-roll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state, and paid into the industrial administration fund.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R. C. M. 1921.

2947. Jurisdiction of board to hear disputes and controversies. All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and heard and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2947, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

The board has quasi-judicial powers, and under this section has jurisdiction finally to determine whether the widow of deceased workman who had not been living

with him for four years prior to his death was "legally entitled" to compensation within the meaning of section 2875 R. C. M. providing that only a wife or widow legally entitled to be supported by the deceased falls within the definition of a "beneficiary" under the act, and therefore erred in declining to pass upon the status of claimant in the absence of determination thereof by a court of competent jurisdiction. *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 152, 158, 269 P 403.

2948. Presumption as to legality of rules, orders, findings, etc., of board. All orders, rules, and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2948, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Morgan v. Butte Central M. & M. Co., 58 M 633, 194 P 496; *Radonich v. Anaconda Copper Min. Co.*, 91 M 437, 445, 8 P 2d 658.

2949. Time for filing—final findings and awards. After a final hearing by the board, it shall within thirty days make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2949, R. C. M. 1921.

2950. Power of board to award compensation and time and manner of payment. The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, and order payment thereof during the continuance of such disability; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2950, R. C. M. 1921.

2951. When a nominal disability indemnity may be awarded. If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2951, R. C. M. 1921.

2952. Jurisdiction to rescind or amend any order, decision, award, etc. The board shall have continuing jurisdiction over all its orders, decisions and awards, and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision or award made by it upon good cause appearing therefor. Provided, that the board shall not have power to rescind, alter, or amend any final settlement or award of compensation more than two years after the same has been made, and provided further that the board shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R. C. M. 1921; amd. Sec. 9, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Under this section and section 2956 R. C. M. 1921, the board has continuing jurisdiction over its orders and awards, and may amend and alter them to meet changed conditions of the injured party, even to the extent of entertaining a petition asking for a lump sum settlement after decision by the district and supreme courts upholding the award of the board. *State v. District Court*, 88 M 400, 403 et seq., 293 P 291.

Where the industrial accident board makes a final order, such as that because of the failure of the injured workman to file written notice of the accident resulting in his injury with his employer (insurer) as required by section 2933, his claim is denied, as distinguished from an order interlocutory in character over which it, under this section, has continuing jurisdiction, and the claimant fails to appeal therefrom, the matter becomes *res adjudicata* and may not thereafter be reopened. *State v. Industrial Acc. Board et al.*, 94 M 386, 389 et seq., 23 P 2d 253.

References

Landeon v. Toole County Refining Co., 85 M 41, 48, 277 P 615.

2953. Record of proceedings to be kept and testimony to be taken down—attorneys. A full and complete record shall be kept of all pro-

ceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney, and the board shall have the power to fix and determine the amount of attorney's fees to be allowed in all proceedings where an attorney appears for either party. In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2953, R. C. M. 1921; amd. Sec. 4, Ch. 139, L. 1931.

Provision Giving Industrial Accident Board Power to Fix Attorney's Fees Held Inoperative

This section as amended by section 4, chapter 139, laws 1931, provides that the industrial accident board "shall have power to fix and determine the amount of attorneys' fees to be allowed" in proceedings had before it under the workmen's compensation act "where an attorney appears for either party." It fails to state in whose favor and against whom or what fund the fees should be allowed. A claimant for compensation entered into a contract with an attorney under which the latter agreed to investigate the case and represent claimant in the district and supreme courts for a fee of \$500, his associate counsel to act in the proceeding before the board. That claim was allowed and the board in mailing a check for \$1,965 to associate counsel

allowed his \$200 as his fee. Counsel first mentioned retained \$500 as his fee, without objection by claimant. In a proceeding brought by him in the supreme court asking that the attorneys be disciplined for violation of the above amendment, held, that in the absence of a provision in the amendatory act declaring that a contract between an attorney and a compensation claimant fixing the fee to be paid shall be void, or a provision making such a contract subject to the approval of the board or the district court, the parties under sections 8993 and 9786 were free to contract as to fees: held further, that by failure to provide in the amendment as to what fund the fee shall be paid from, or in whose favor or against whom it shall be allowed, the amendment is rendered so vague and uncertain as to be void, and that therefore the attorneys may not be held subject to discipline for an alleged violation of the statute. In re Maury et al., 97 M 316, 322, 34 P 2d 380.

2954. Collateral attack not permitted. No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2954, R. C. M. 1921.

References

Cited or applied as section 20 (h), chapter 96, laws of 1915, in Willis v. Pilot Butte Min. Co., 58 M 26, 35, 190 P 124.

2955. Application for rehearing. At any time within twenty days after the service of any order or decision of the board, any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds, and upon no other grounds:

- (1) That the board acted without or in excess of its powers;
- (2) That the order, decision, or award was procured by fraud;
- (3) That the evidence does not justify the findings;
- (4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing;
- (5) That the findings do not support the order, decision, or award;
- (6) That the order, decision, or award is unreasonable.

History: En. Sec. 21, Ch. 96, L. 1915; re-en. Sec. 2955, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

R. C. M. 1921) as an entirety, see references under section 2816.

References

State v. District Court, 88 M 400, 403,

293 P 291; Radonich v. Anaconda Copper Min. Co., 91 M 437, 446, 8 P 2d 658; State v. Industrial Acc. Board et al., 94 M 386, 388 et seq., 23 P 2d 253.

2956. Board may at any time diminish or increase an award. Nothing contained in the preceding section shall, however, be construed to limit the right of the board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested, to review, diminish, or increase, within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

History: En. Sec. 21, Ch. 96, L. 1915; re-en. Sec. 2956, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Under section 2952, R. C. M. 1921, and this section the board has continuing jurisdiction over its orders and awards, and may amend and alter them to meet changed conditions of the injured party,

even to the extent of entertaining a petition asking for a lump sum settlement after decision by the district and supreme courts upholding the award of the board. State v. District Court, 88 M 400, 404, 293 P 291.

References

Landeen v. Toole County Refining Co., 85 M 41, 48, 277 P 615; State v. Industrial Acc. Board et al., 94 M 386, 388 et seq., 23 P 2d 253.

2957. Application for rehearing—contents—rules of procedure. The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust, or unlawful, and shall in other respects conform to such rules and regulations as the board may prescribe. The board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order, and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

History: En. Sec. 21, Ch. 96, L. 1915; re-en. Sec. 2957, R. C. M. 1921.

R. C. M. 1921) as an entirety, see references under section 2816.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

Radonich v. Anaconda Copper Min. Co., 91 M 437, 446, 8 P 2d 658.

2958. Application for rehearing or appeal shall not operate as stay. An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employee, or other person from complying with or obeying any order or requirement of the board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the board or the court may direct.

History: En. Sec. 21, Ch. 96, L. 1915; re-en. Sec. 2958, R. C. M. 1921.

R. C. M. 1921) as an entirety, see references under section 2816.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc.,

Radonich v. Anaconda Copper Min. Co., 91 M 437, 446, 8 P 2d 658.

2959. Appeal to district court. Within thirty days (30) after the application for a rehearing is denied, or, if the application is granted, within

thirty days (30) after the rendition of the decision on the rehearing, and within twenty days (20) after notice thereof, any party affected thereby may appeal to the district court of the judicial district of the state of Montana, in and for the county in said state wherein the accident or injury occurred or the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, and said appeal shall be for the purpose of having the lawfulness of the original order, decision, or award, or order, decision or award on rehearing inquired into and determined.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2959, R. C. M. 1921; amd. Sec. 10, Ch. 177, L. 1929.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Jurisdiction of District Court

By section 2926, R. C. M. 1921, the application of a beneficiary under the workmen's compensation act for conversion of monthly compensation payments into a lump sum payment is addressed to the discretion of the industrial accident board, and on appeal the district court in that behalf may act only in review of the action of the board thereon; therefore, where the beneficiary (widow) had asked for conversion but the board had not acted upon the request at the time the insurance carrier appealed from the award made and the district court heard the appeal upon the record certified by the board, which did not disclose that the board had made investigation as to whether or not the widow's request should or should not be granted, the court exceeded its jurisdiction in directing a lump sum payment. *Landeen v. Toole County Refining Co.*, 85 M 41, 48, 277 P 615.

Where the district court exceeds its jurisdiction in entertaining an application for writ of prohibition, and application is made to the supreme court for like relief by the aggrieved party, there is no reason why the latter tribunal should permit the former to proceed in an attempt to exercise jurisdiction which it does not possess and await

its action before exercising its discretion in entertaining relator's application. *State v. District Court*, 88 M 401, 447.

Trial on Appeal

The trial on appeal to the district court from an order or reward made by the industrial accident board provided for by this section upon the certified record of the board, unless the court in the exercise of its discretion shall permit additional evidence to be introduced, is de novo only to the extent it permits additional evidence to be introduced; if the cause is heard on the record of the board the re-examination is in the nature of a review; but in either event the court must render its own judgment irrespective of what has gone before. *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 596, 254 P 880.

When Board May be Reversed

On an appeal to the district court from an award made by the industrial accident board, the court should not reverse the findings of the board unless the evidence clearly preponderates against them, the board having been in a better position to determine of the credibility of the witnesses and the weight to be given to their testimony than can the court from an inspection of the record. *Morgan v. Butte Central Min. etc. Co.*, 58 M 633, 640, 194 P 496.

References

Radonich v. Anaconda Copper Mining Co., 91 M 437, 447, 8 P 2d 658; *Rom v. Republic Coal Co.*, 94 M 250, 256, 22 P 2d 161; *State v. Industrial Acc. Board et al.*, 94 M 386, 388 et seq., 23 P 2d 253.

2960. How appeal taken—notice—record—trial. Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately

upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2960, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Record of Board

Claimant for compensation under the workmen's compensation act at whose instance on appeal to the district court the record and proceedings of the industrial accident board were introduced in evidence will not be heard to complain of the sufficiency of the certificate attached thereto, on appeal by his employer to the supreme court. *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 596, 254 P 880.

Trial

The power given by this section is that of review rather than that of retrial. *Willis v. Pilot Butte Min. Co.*, 58 M 26, 34, 190 P 124.

The trial on appeal to the district court from an order or award made by the industrial accident board provided for by section 2959, R. C. M. 1921, upon the certified record of the board, unless the court in the exercise of its discretion shall permit additional evidence to be introduced, is de novo only to the extent it permits additional evidence to be introduced; if the cause is heard on the record of the board the re-examination is in the nature of a review; but in either event the court must render its own judgment irrespective of what has gone before. *Dosen v. East Butte Copper Mining Co.*, 78 M 579, 596, 254 P 880.

Claimant under the workmen's compensation act cannot, under section 9369, R. C. M. 1921, predicate error upon the court's failure to make findings on the trial of his cause on appeal from an order of the industrial accident board, in the absence of a request for such findings. *Nicholson v. Roundup Coal Min. Co. et al.*, 79 M 358, 368 et seq., 257 P 270.

Id. The rule that the findings of the industrial accident board cannot be interfered with by the trial court on appeal if there is any evidence to support them does not apply to decisions on questions of law, and has application only where the appeal is determined upon the certified record made by the board; hence is inapplicable where the case is tried de novo and additional testimony is received showing conditions differing from those presented to the board.

Under the provisions of the workmen's compensation act the district court, on appeal from an order or award of the industrial accident board, must hear it on the certified record of the board, but may, in its discretion, permit new evidence to be introduced; if it does, the trial proceeds upon a consideration of the evidence heard by the board and that which the court permits in addition thereto, and the court must thereupon render its own judgment. *Mulholland v. Butte & Superior Min. Co.*, 87 M 561, 567, 289 P 574.

Where, on appeal by a claimant under the workmen's compensation act, to the district court from an order of the industrial accident board, the matter is submitted on the record made before the board, the hearing is in the nature of a review, but where additional evidence is heard, the trial as to it is de novo. *Murphy v. Industrial Accident Board*, 93 M 1, 6, 16 P 2d 705.

Where the purpose of an appeal by a claimant under the workmen's compensation act was to test the correctness of an order of the industrial accident board limiting the period of payment of the award allowed, the court did not err in permitting additional oral testimony of claimant's condition at the time of expiration of the period fixed by the board. *Sykes v. Republic Coal Co.*, 94 M 239, 243, 21 P 2d 732.

Trial de Novo—Meaning of Term

This section, in declaring that trial of a workman's compensation case in the district court on appeal from a decision of the in-

dustrial accident board shall be "de novo," does not mean a full retrial, but does mean that that court in deciding the case shall consider the evidence heard by the board and such additional evidence as it may admit, in rendering its judgment. *Woin v. Anaconda Copper Min. Co.*, 99 M 163, 174, 43 P 2d 663.

Id. The mere fact that additional evidence admitted by the district court on appeal of a workman in a compensation case was to some extent repetitious in character, held not to have resulted in a full trial de novo, under the last above rule.

What Constitutes "Good Cause"

Under the rule, prescribed by the workmen's compensation act, that all its parts shall be given a liberal construction, held that "good cause" for the admission of additional testimony on appeal from an award made by the industrial accident board is shown, in the absence of specific provision as to the manner in which it must be shown, by a presentation of the reasons why it should be permitted, made in the

presence of opposing counsel. *Sykes v. Republic Coal Co.*, 94 M 239, 243, 21 P 2d 732.

Under the provision of this section that on appeal to the district court from a ruling of the industrial accident board in a case arising under the workmen's compensation act, additional evidence may be admitted "for good cause shown," the party seeking to introduce such evidence is not required to present a verified motion supported by affidavits; an informal presentation of persuasive reasons for the request, made in the presence of opposing counsel, being sufficient to show "good cause." *Woin v. Anaconda Copper Min. Co.*, 99 M 163, 174, 43 P 2d 663.

References

Edwards v. Butte & Superior Min. Co., 83 M 122, 124, 270 P 634; *Landeen v. Toole County Refining Co.*, 85 M 41, 48, 277 P 615; *Radonich v. Anaconda Copper Min. Co.*, 91 M 437, 442, 447, 8 P 2d 658; *Moffett v. Bozeman Canning Co. et al.*, 95 M 347, 359, 26 P 2d 973.

2961. Appearances—setting aside conclusions, orders, etc., of board—judgment and findings. The board and each party to the action or proceeding before the board shall have the right to appear in the proceeding, and it shall be the duty of the board to so appear. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the board, or that any finding and conclusion, or any order, rule, or requirement of the board is unreasonable, the court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said board, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2961, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 22 (c), chapter 96, laws of 1915, in *Willis v. Pilot Butte Min. Co.*, 58 M 26, 35, 190 P 124; *Dosen v.*

East Butte Copper Min. Co., 78 M 579, 598, 254 P 880; *Edwards v. Butte & Superior Min. Co.*, 83 M 122, 124, 270 P 634; *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 152, 158, 269 P 403; *Landeen v. Toole County Refining Co.*, 85 M 41, 48, 277 P 615; *Mulholland v. Butte & Superior Min. Co.*, 87 M 561, 289 P 574; *Kearney v. Industrial Acc. Board*, 90 M 228, 235, 1 P 2d 69; *Radonich v. Anaconda Copper Min. Co.*, 91 M 437, 447, 8 P 2d 658.

2962. Appeals to supreme court. Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court,

without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried anew by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2962, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Circumstances Under Which Supreme Court May Not on Own Motion Remand Cause to Industrial Accident Board for Taking of Further Testimony

Where claimant under the workmen's compensation act was represented by experienced counsel both at the hearing before the industrial accident board and on his appeal to the district court, which permitted him to introduce additional testimony, thereby strengthening the adverse decision of the board, that court, however, deciding in his favor on a finding not supported by the evidence, the supreme court may not of its own motion, under the provisions of the act, in reversing the judgment direct the district court to remand the cause to the board for the taking of further testimony. (Justices Ford and Angstrom dissenting.) *Radonich v. Anaconda Copper Mining Co.*, 91 M 437, 8 P 2d 658.

Constitutionality

This section is invalid to the extent that it attempts to confer authority on the supreme court to try the cause "anew" as though the matter was originally before the court. *Willis v. Pilot Butte Min. Co.*, 58 M 26, 34, 190 P 124.

Extent of Review

Where an appeal from an award of the industrial accident board is heard by the district court upon the record certified to it by the board, the supreme court in passing upon the sufficiency of the evidence will go no further than to ascertain whether there is any evidence to sustain the findings of the board and the trial court, and unless it clearly preponderates against the findings, it is its duty to sustain them. *Landeen v. Toole County Refining Co.*, 85 M 41, 277 P 615.

Jurisdiction

Where the district court exceeds its jurisdiction in entertaining an application for writ of prohibition, and application is made to the supreme court for like relief by the aggrieved party, there is no reason why the latter tribunal should permit the former to proceed in an attempt to exercise jurisdic-

tion which it does not possess and await its action before exercising its discretion in entertaining relator's application. *State v. District Court*, 88 M 400, 293 P 291.

Where on appeal from an order of the industrial accident board denying compensation claimed due by the applicant under the provisions of the workmen's compensation act, the district court on the same record evidence, affidavits and written report of physicians made to the board, reversed the board's order and allowed compensation, the supreme court on appeal to it by the board, is in as favorable a position as either the board or the district court to pass on the merits of the controversy on the same record presented to it. *Kearney v. Industrial Acc. Board*, 90 M 228, 1 P 2d 69.

The final determination by the district court of the rights of the parties to a controversy arising between employer and employee with relation to an award made under the workmen's compensation act is a judgment; hence where the court rendered its "judgment and order" awarding to the compensation claimant a sum of money covering the total of fifty-six weeks' compensation, that period having then expired, less payments already made, the result was a judgment, which was fully satisfied when the attorney of claimant accepted the amount of the award tendered by the clerk of court, acting as the agent of the employer, prior to appeal to supreme court, and therefore the attempted appeal will be dismissed. *Paulich v. Republic Coal Co.*, 97 M 224, 227, 33 P 2d 514.

Power of Supreme Court on Appeal

Quaere: May the supreme court in a workman's compensation case, where it is confronted on appeal by an extraordinary condition, factual or legal, in order to prevent a miscarriage of justice, remand the cause with direction that the industrial accident board grant the claimant a further hearing? *Radonich v. Anaconda Copper Min. Co.*, 91 M 437, 8 P 2d 658.

Time for Taking Appeal

The industrial accident board is not an "inferior court" within the meaning of section 9732, R. C. M. 1921, providing that an appeal from a judgment rendered on an appeal from an inferior court must be taken within ninety days after the entry of such judgment; hence failure of appellant to serve and file its notice of appeal within ninety days from the entry

of the judgment of the district court on appeal from an order of the board does not warrant dismissal of the appeal to the supreme court. *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 254 P 880.

When Not Bound by Findings of Trial Court

The supreme court is not bound by the findings of the trial court in an action

by a claimant under the workmen's compensation act where the cause was tried on the record made by the industrial accident board without any additional evidence being introduced. *Goodwin v. Elm Orlu Min. Co. et al.*, 83 M 152, 269 P 403.

References

Mulholland v. Butte & Superior Min. Co., 87 M 561, 289 P 574.

2963. Appropriations to carry out provisions of act. There is hereby appropriated out of the state treasury the sum of fifty thousand dollars, or so much thereof as may be necessary, to be known as the industrial administration fund, out of which the salaries, traveling, and office expenses of the board shall be paid, and all other expenses incident to the administration of this act.

There is hereby appropriated out of the industrial accident fund such sums as may be necessary to pay the compensation provided for in this act.

History: En. Sec. 23, Ch. 96, L. 1915; re-en. Sec. 2963, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 23 (a), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 79, 156 P 130.

2964. Court to give liberal construction to act. Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

The workmen's compensation act must be construed as a whole to the end that each of its provisions may be given effect and its purposes accomplished, and while this section directs a liberal construction of its provisions, it is not meant thereby that either the industrial accident board or the courts may disregard its clear provisions. *Davis v. Industrial Accident Board*, 92 M 503, 511, 15 P 2d 919.

Where a coal miner in the course of his employment lost his left eye, receiving therefore full compensation under the provisions of the workmen's compensation act, and nine years later while working at the same occupation under a different employer again suffered an accident destroying the vision of his right eye, thus rendering him totally blind, he was,

under a liberal construction of the act, entitled to compensation as for a total permanent disability for a period of 500 weeks, less payments previously received for 200 weeks, as against the contention that under the act he was only entitled to compensation for the loss of one eye. *McDaniel v. Eagle Coal Co. et al.*, 99 M 309, 312, 43 P 2d 655.

References

Cited or applied as section 24 (a), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 78, 156 P 130; *Wirta v. North Butte Mining Co. et al.*, 64 M 279, 291, 210 P 332; *Dosen v. East Butte Copper Min. Co.*, 78 M 579, 598, 254 P 880; *Chmielewska v. Butte & Superior Min. Co.*, 81 M 36, 42, 261 P 616; *Edward v. Butte & Superior Min. Co.*, 83 M 122, 129, 270 P 634; *Maki v. Anaconda Copper Min. Co.*, 87 M 314, 321, 287 P 170; *Radonich v. Anaconda Copper Min. Co.*, 91 M 437, 439, 8 P 2d 658; *Murray Hospital v. Angrove*, 92 M 101, 113, 10 P 2d 577; *Sykes v. Republic Coal Co.*, 94 M 239, 244, 21 P 2d 732.

2965. Effect of decision holding any part of act unconstitutional. If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and

reasonably effective for carrying out the main purpose and intention of the legislature in enacting the same, as such purpose and intention may be disclosed by the act.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2965, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Operation and Effect

Though part of this act may be in-

valid, that does not require the conclusion that any other part of it is invalid, if, after the invalid part is eliminated, enough is left to accomplish all the purposes for which the legislation was enacted, particularly when this section is considered. *Shea v. North Butte Min. Co.*, 55 M 522, 538, 179 P 499.

2966. Money in industrial accident fund held in trust. The moneys coming into the industrial accident fund shall be held in trust for the purpose for which such fund is created, and if this act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 24 (c), chapter 96, laws of 1915, in *Willis v. Pilot Butte Min. Co.*, 58 M 26, 40, 190 P 124.

2967. Pending actions not affected by act. This act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2967, R. C. M. 1921.

2968. Annual report—copies for general distribution. The board shall, not later than the first day of October of each year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R. C. M. 1921.

2969. When act to take effect. This act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2969, R. C. M. 1921.

2970. When and how employer may elect to adopt—direct payment to employee.

COMPENSATION PLAN NUMBER ONE

Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the

fiscal year for which such election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R. C. M. 1921.

2971. Proof of solvency of employer electing plan No. 1 to be filed. Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars (\$5.00) to be paid into the industrial administration fund for the filing of every such proof of solvency.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931.

2972. Employer permitted to carry on business and settle directly with employee—renewal of application. If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R. C. M. 1921.

2973. Additional proof of solvency—revocation of order. The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R. C. M. 1921.

2974. Requiring security of employer. If said industrial accident board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find is reasonable and necessary to meet all liabilities of such employer,

which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safe-keeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R. C. M. 1921.

2975. Failure of employer to pay compensation—duty of board.

Upon the failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such state accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate said securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R. C. M. 1921.

2976. When employer to make deposit or security to guarantee payment of compensation. Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability, in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board, or if the said board

shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R. C. M. 1921.

2977. When employer may be relieved from liability. Any employer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R. C. M. 1921.

2978. Employer electing plan No. 2 to insure his liability.

COMPENSATION PLAN NUMBER TWO

Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R. C. M. 1921.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

Murray Hospital v. Angrove, 92 M 101, 108, 10 P 2d 577; Moffett v. Bozeman Canning Co. et al., 95 M 347, 349 et seq., 26 P 2d 973; Anderson v. Amalgamated Sugar Co., 98 M 23, 37 P 2d 552.

2979. Duty of employer electing plan number two—amount of insurance necessary. Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable

and necessary investigation, and the said employer shall furnish to such board all information which it may require.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R. C. M. 1921.

2980. Policies to contain what. All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured. When any such policy, or a renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars (\$3.00), which fee is to be credited to the industrial administrative fund.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R. C. M. 1921; amd. Sec. 6, Ch. 139, L. 1931.

2981. Agreement to be contained in policies of insurance—deposit of bonds. No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, in an amount not less than five thousand dollars (\$5,000.00) or more than twenty thousand dollars (\$20,000.00), as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability; and thereafter said insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

History: En. Sec. 35, Ch. 96, L. 1915;	References
amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec.	Moffett v. Bozeman Canning Co. et al,
2981, R. C. M. 1921; amd. Sec. 11, Ch. 177,	95 M 347, 357, 26 P 2d 973.
L. 1929.	

2982. Policies made subject to this act—form of insurance. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, and as otherwise provided by law.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R. C. M. 1921.

2983. Renewals. Every renewal of such policy shall be made and delivered to said board at least thirty days prior to the expiration of the expiring policy.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2983, R. C. M. 1921.

2984. Deposits by insurer with board. Within thirty days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct; provided, that if the board deems the amount on deposit by said insurer under the provisions of section 2981 sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R. C. M. 1921.

2985. How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or

(2) By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R. C. M. 1921.

2986. Cancellation of insurance policy. No policy of insurance issued under the provisions of compensation plan No. 2 shall be canceled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the board, unless such policy sought to be canceled shall have been sooner replaced by other insurance.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2986, R. C. M. 1921.

2987. Report of insurance companies to board. Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R. C. M. 1921.

R. C. M. 1921) as an entirety, see references under section 2816.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., Herberson v. Great Falls Wood & Coal Co., 83 M 527, 531, 273 P 294.

2988. Policies to contain clause agreeing to do what—approval or change. Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the

approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R. C. M. 1921.

2989. Deposits under plan No. 2 as security. Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safe-keeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R. C. M. 1921.

2990. What necessary in electing plan No. 3—percentage of pay-roll to be paid in under plan.

COMPENSATION PLAN NUMBER THREE

Every employer, subject to the provisions of compensation plan No. 3 shall, in the manner and at the times herein specified, pay into the state treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay-roll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Class 1. Broom or brush manufacturing, without sawmill; theatre stage employees; moving-picture operators; electrotyping; engraving; lithographing; photo-engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; sixty-five one-hundredths of one per centum.

Class 2. Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of one per centum.

Class 3. Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including springs or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tugs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor-trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; one and three-tenths per centum.

Class 4. Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper-hanging; calcimining; white-washing; making willow baskets; setting tiles; mantles and marble work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; one and four-tenths per centum.

Class 5. Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead, and zinc; operating machine-shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire-alarm apparatus inside; covering boilers or steam-pipes; concrete-laying in floors, street-paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and rowboats; well-drilling; constructing and repairing of paving bricks or blocks; one and five-tenths per centum.

Class 6. Operating laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show-cases, office and store furniture and fixtures; cabinet-making; manufacture of wire mattresses, bed-springs, wooden coffins, caskets, rough wooden boxes for coffins; building hothouses, working in foodstuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour-mills, chop mills, feed mills; one and six-tenths per centum.

Class 7. Manufacturing wood fibre ware; installing automatic sprinklers or ventilating systems; setting glass; erecting fire-proof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes, brooms with sawmills, earthenware, fire-clay, porcelain ware, pottery, tile, terracotta; brush making with sawmills; one and eight-tenths per centum.

Class 8. Manufacturing of ammonia; operating waterworks, gas-works; grading, either of streets or otherwise, or road-making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works, pile-treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of waterworks, gas-works, and coke-ovens, including laying of mains and connections, without blasting; one and nine-tenths per centum.

Class 9. Manufacturing artificial ice; operating refrigerator plants, cold-storage plants, foundries, packing-houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction-engines, harvesting machinery; manufacturing asphalt; operating steam-heating and power-plants; manufacturing gas or gasoline engines; operating ferries; stone crushing, not at quarries; boat or ship-building, other than canoes or rowboats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stock-yards; two per centum.

Class 10. Operating paper-mills, pulp-mills; longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime-kilns or burners, no quarrying; installing boilers, steam-engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing-cases, sash, doors, and blinds; operation and maintenance of interurban railways, without third rail; two and two-tenths per centum.

Class 11. Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; two and one-quarter per centum.

Class 12. Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing-mills, independent; cement manufacturing; operating blast-furnaces; two and three-tenths per centum.

Class 13. Street or road-making, with blasting; manufacturing wood baskets; kindling-wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; two and four-tenths per centum.

Class 14. Concentrating and amalgamating of ores; woodworking, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood-saws; painting, exterior work; operating boiler-works; making steam-shovels; boilers; shipwrighting; operating saw-mills, lath-mills; bridge-work factories; operation of and work in mines, other than coal; two and five-tenths per centum.

Class 15. Operating rolling-mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stone-yards connected with quarries; boat or ship-building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle-mills; operating quarries; two and three-quarters per centum.

Class 16. Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power-plants, water-works and water-systems; installing furnaces; constructing blast-furnaces; sewer-building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways; operating coal-mines; three per centum.

Class 17. Operating drydocks, including floating drydocks; ornamental metalwork within buildings; electric railway construction, without rock-work or blasting; railroad construction, including street and cable railways, without rockwork or blasting; building canals, without rockwork or blasting; installing freight or passenger elevators; operation of telephone and telegraph systems; making dredges; constructing drydocks; three and one-quarter per centum.

Class 18. Carpenters not otherwise specified; constructing grain elevators, not metal-framed; stump pulling with donkey-engines; steam, electric and cable railway construction, with rock-work or blasting; construction

of logging railways, with rockwork or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power-plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; three and one-half per centum.

Class 19. Pile-driving; clearing land with blasting; galvanized iron or tin-works; marblework; fire-proofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; three and three-quarters per centum.

Class 20. Constructing breakwaters, marine railways, and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft-sinking, not otherwise specified; four per centum.

Class 21. Moving safes, boilers, machinery; construction of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roofwork; slate work; stonework; stone-setting; brickwork construction, not otherwise specified; construction of canals, with rockwork or blasting; bridge-building, wooden; construction of floating docks; constructing chimneys of metal or concrete; four and one-half per centum.

Class 22. Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer-building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing of fireworks; five per centum.

Class 23. Erecting fire-escapes, fire-proof doors, and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; six per centum.

Class 24. Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous works; caisson works; six and one-half per centum.

Class 25. House-moving, house-wrecking; construction or repair of steeples; construction of brick chimneys; six and three-quarters per centum.

Class 26. Manufacturing powder, dynamite, and other explosives, not otherwise specified; ten per centum.

Class 27. Any employer and his employees engaged in non-hazardous work or employment, by their joint election, filed with and approved by the board, may accept the provisions of compensation plan No. 3. In such event, such employer and employees shall be known as class 27, the rate of assessment in which shall be one-half of one per centum.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R. C. M. 1921.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

References

Cited or applied as section 40, chap-

ter 96, laws of 1915, in *Lewis and Clark County v. Industrial Accident Board*, 52 M 6, 12, 155 P 268; *London G. & A. Co., Ltd. v. Indus. Acc. Bd.*, 82 M 304, 309, 266 P 1103; *Murray Hospital v. Angrove*, 92 M 101, 108, 10 P 2d 577; *Davis v. Industrial Accident Board*, 92 M 503, 505, 15 P 2d 919.

2990.1. Permitting employers in certain non-hazardous occupations to elect to comply and come under the provisions of plans 2 and 3 of this act—classification of such employers and their employees. Any employer engaged

in farming, dairying, agriculture, viticulture, horticulture, stock or poultry raising, may elect to comply with the provisions of plan 2 or 3 of this act and pay into the industrial accident fund the premiums provided in the act, in which event he shall not be liable to respond in damages at common law or by statute for injury or death of any employee during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn. Such employer shall be classified under the provisions of section 2992 as to rate of assessments, which assessment shall be paid in the manner and at the times specified under plan 2 or 3 of the workmen's compensation act.

History: En. Sec. 17, Ch. 121, L. 1925.

References

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

London G. & A. Co., Ltd. v. Indus. Acc. Bd., 82 M 304, 309, 266 P 1103.

2991. Computation of assessments. If a single establishment or work comprises several occupations listed in the preceding section in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards, provided that in no case shall any assessment levied under the provisions of this act be for a less amount than two and one-half dollars.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R. C. M. 1921.

2992. What classification advisory only and subject to rearrangement, etc. The classification of hazardous occupations in section 2990 and the rates of premium or assessment therein fixed are advisory only, and the board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in section 2990, as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in said section shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the board making such change, except that in case of new industries, or industries not enumerated in section 2990, the board shall have the right to make an immediate classification thereof and establish a rate therefor.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R. C. M. 1921.

2993. Intent and purpose of plan No. 3—fund to be paid for what purpose only—accounts. It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employees coming under the provisions of said plan, and that

all funds collected by assessments as herein provided shall be paid into one common fund to be known as the industrial accident fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of compensation plan No. 3; provided, that accounts shall be kept with each industry, trade, occupation, or employment in accordance with the foregoing classifications, or otherwise, as the board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R. C. M. 1921.

2994. Initial payment July 15, 1915. There shall be collected from all classes as initial payment into the industrial accident fund, on or before the fifteenth day of July, 1915, one-fourth of the premium assessment for that fiscal year, and one-twelfth thereof at the first of each month beginning with October 1, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the industrial accident fund, no assessment shall be called for such month.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2994, R. C. M. 1921.

2995. Manner and time of making payments by employers. The first payment shall be collected upon the pay-roll of the months of April, May, and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February 1st in the year following, in the manner above provided.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2995, R. C. M. 1921.

2996. In case of default, rates to be advanced twenty-five per cent. Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of sections 2990 to 2995, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R. C. M. 1921.

2997. Changes in classification of risks to be equalized. Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2997, R. C. M. 1921.

2998. Deficiency in industrial accident fund. If, at the end of any year, it shall be seen that the contribution to the industrial accident fund

by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R. C. M. 1921.

2999. Amount to be set apart when required payment reasonably certain. Upon the happening of an accident where death or the nature of the injury renders the amounts of future payments certain, or reasonably certain, the board shall forthwith cause the treasurer of the board to set apart out of the industrial accident fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments, not exceeding, however, the sum of four thousand dollars for any one case.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2999, R. C. M. 1921.

3000. Investment of reserve—payment of instalments. The treasurer of the board shall invest such reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid the monthly instalments, and any lump sum, then or thereafter arranged for; provided, however, that when there is sufficient money in the industrial accident fund to meet such compensation payments, any surplus remaining may be placed in the industrial reserve fund and invested by the board in the securities specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R. C. M. 1921.

3001. Treasurer to keep accounts of segregations. The treasurer of the board shall keep an accurate account of all such segregations of the industrial accident fund, and upon direction of the board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R. C. M. 1921.

3002. Collection in case of default by employer—cancellation of right to operate under plan three for failure to pay premium. If any employer shall default in any payment to the industrial accident fund, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative.

The industrial accident board is hereby authorized, in its discretion, to cancel an employer's right to operate under plan three (3) of the workmen's compensation act for failure to pay the premiums due the industrial accident fund; provided, that when the industrial accident board makes an order cancelling an employer's right for failure to pay premiums to the industrial accident fund it shall be the duty of the industrial accident board to make such order at least sixty (60) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties where the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3)

conspicuous places where the workmen can readily see said notices, to the effect that the industrial accident board has cancelled the right of the said employer to operate under the act, and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the workmen's compensation act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1935.

References

Cited or applied as section 40 (m), chapter 96, laws of 1915, in *City of Butte v. Industrial Accident Board*, 52 M 75, 79, 156 P 130.

NOTE.—For cases citing workmen's compensation act (secs. 2816-3033, inc., R. C. M. 1921) as an entirety, see references under section 2816.

3003. Injury happening while employer is in default. For any injury happening to any of his workmen during default in any payment to the industrial accident fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the industrial accident fund the amount of such default, together with the penalty prescribed by section 2996.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R. C. M. 1921.

References

Clark v. Olson, 96 M 417, 435, 31 P 2d 283.

3004. Assignment of cause of action to state. The person entitled to sue under the provisions of the preceding section shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the industrial accident fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R. C. M. 1921.

References

Clark v. Olson, 96 M 417, 435, 31 P 2d 283.

3005. Prosecution or settlement of cause of action. Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the board, in its discretion.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R. C. M. 1921.

3006. Application for compensation under plan No. 3. Where a workman is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the workman.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R. C. M. 1921.

3007. Payment of physician. For a proper compliance with the provisions of the preceding section, the physician, after approval by the board, shall be paid out of the industrial administration fund, one and one-half dollars for each case.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3007, R. C. M. 1921.

3008. Application in case of death. Where death results from the injury, the parties entitled to compensation under compensation plan No. 3, or some one in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the board.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R. C. M. 1921.

3009. What included in computing compensation in hazardous employment. In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piece-work, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R. C. M. 1921.

3010. Disbursements out of industrial accident fund—employer to pay warrant. Disbursements out of the industrial accident fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the accident fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R. C. M. 1921.

3011. Earnings and interest on deposits—treasurer to make no profit. All earnings made by the industrial accident fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the accident fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R. C. M. 1921.

3012. Unsafe places for workmen forbidden.

SAFETY PROVISIONS

No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

History: En. Sec. 50, Ch. 96, L. 1915; re-en. Sec. 3012, R. C. M. 1921.

3013. Removal of safety devices, etc., forbidden. No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employee in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employees.

History: En. Sec. 50, Ch. 96, L. 1915; re-en. Sec. 3013, R. C. M. 1921.

3014. Jurisdiction and supervision of board over employment and places of employment. The board is vested with full power and jurisdiction over, and shall have such supervision of every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employee in such employment or place of employment.

History: En. Sec. 50, Ch. 96, L. 1915; re-en. Sec. 3014, R. C. M. 1921.

3015. Powers of board regarding safety of employees. The board shall have power, in addition to other powers herein granted, by general or special orders, rules, or regulations, or otherwise:

1. To declare and prescribe such safety devices, safeguards, or other means or methods of protection as are well adapted to render employees and places of employment safe;

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employees;

3. To fix and order such reasonable standards for the construction, repair, and maintenance of places of employment as shall render them safe;

4. To require the performance of any act necessary for the protection of life and safety of employees;

5. To declare and prescribe the general form of industrial accident reports, the accidents to be reported, and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the board from requiring supplemental accident reports; provided, however, that where, by the laws of the state of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the board, but it shall be the duty of the board to see that the employer lives up to and obeys said laws.

History: En. Sec. 50, Ch. 96, L. 1915; re-en. Sec. 3015, R. C. M. 1921.

3016. Notice of hearing for purpose of considering and issuing general safety orders. Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the board shall cause a notice of such hearing to be published in

one or more daily newspapers of general circulation, published and circulated in the state. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the board after a hearing has been had.

History: En. Sec. 50, Ch. 96, L. 1915; re-en. Sec. 3016, R. C. M. 1921.

3017. Places defined as hazardous to be inspected once each year. After July 1, 1915, every place of employment of a work or occupation defined by sections 2847 to 2852, inclusive, to be hazardous shall be inspected at least once during each year by an inspector or examiner appointed by the board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employees working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

History: En. Sec. 51, Ch. 96, L. 1915; re-en. Sec. 3017, R. C. M. 1921.

3018. Report of inspectors. A report of such inspection shall be filed in the office of the board, and a copy thereof given the employer.

History: En. Sec. 51, Ch. 96, L. 1915; re-en. Sec. 3018, R. C. M. 1921.

3019. Certificate of safety of inspected places. Each place of employment inspected as provided in section 3017, and found in a satisfactory condition, shall receive from the board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.

History: En. Sec. 51, Ch. 96, L. 1915; re-en. Sec. 3019, R. C. M. 1921.

3020. When board may order safety devices installed. If, after such inspection and report thereof to the board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this act, the board shall order the installation, use, maintenance, and operation, within such reasonable time as the board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of the preceding section.

History: En. Sec. 51, Ch. 96, L. 1915; re-en. Sec. 3020, R. C. M. 1921.

3021. When board or inspector may order place of employment closed and put in safe condition. If, after such inspection, the board or any inspector or examiner thereof shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

History: En. Sec. 51, Ch. 96, L. 1915; **References**
re-en. Sec. 3021, R. C. M. 1921.

State ex rel. Nagle v. Page, 98 M 14,
37 P 2d 575.

3022. Fee for annual inspection to be paid by employer. For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year; provided, that no inspection fee under this section shall be less than five dollars.

History: En. Sec. 52, Ch. 96, L. 1915; re-en. Sec. 3022, R. C. M. 1921.

References
State ex rel. Nagle v. Page, 98 M 14,
37 P 2d 575.

3023. Fees in subsequent inspections. The fees for any subsequent or reinspection made during any year in which an annual inspection shall have been made shall be:

Where the annual pay-roll for the preceding year shall have been not more than twenty-five thousand dollars, five dollars;

Where the annual pay-roll for the preceding year shall have been more than twenty-five thousand dollars, but not more than one hundred thousand dollars, ten dollars;

Where the annual pay-roll for the preceding year shall have been more than one hundred thousand dollars, but not more than five hundred thousand dollars, twenty dollars;

Where the annual pay-roll for the preceding year shall have been more than five hundred thousand dollars, but not more than one million dollars, forty dollars;

Where the annual pay-roll for the preceding year shall have been more than one million dollars, fifty dollars.

History: En. Sec. 52, Ch. 96, L. 1915; re-en. Sec. 3023, R. C. M. 1921.

References
State ex rel. Nagle v. Page, 98 M 14,
37 P 2d 575.

3024. Inspection fees and fines to be paid monthly into what fund. All fees received by the board for inspection, or for subsequent or reinspection, and all fines imposed or collected for a violation of the safety provisions of this act, shall be paid monthly to the state treasurer, who shall credit such payment to the industrial administration fund.

History: En. Sec. 52, Ch. 96, L. 1915; re-en. Sec. 3024, R. C. M. 1921.

3025. Orders concerning places and employments found to be unsafe. Whenever the board shall find that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employments and places of employment, and may in said order direct that such additions, repairs, improvements, or changes be made; and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3025, R. C. M. 1921.

3026. Board may grant time within which to comply with any order. The board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the board for an extension of time, which the board shall grant if it finds such an extension of time necessary.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3026, R. C. M. 1921.

3027. Board may summarily investigate places believed to be unsafe. Whenever the board shall learn, or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3027, R. C. M. 1921.

3028. Compliance with orders, directions, rules, etc., enjoined. Every employer, employee, and other person shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the board, and shall do everything necessary or proper in order to secure compliance with, and observance of every such order, decision, rule, or regulation.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3028, R. C. M. 1921.

3029. Act not to deprive any other public corporation, board, or department of jurisdiction. Nothing contained in this act shall be construed to deprive any other public corporation, board, or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the board.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3029, R. C. M. 1921.

3030. Orders, rules, findings, etc., of board as evidence. Every order of the board, general or special, its rules or regulations, findings, or decisions shall be admissible in evidence in any prosecution for, or suit to prevent the violation of any of the provisions of this act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3030, R. C. M. 1921.

3031. Board may investigate cause of all industrial accidents—orders and recommendations concerning same. The board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from or connected therewith, resulting in personal injury or death; and the board shall have the power to make such orders or recommendations with respect to such accidents as

may be just and reasonable; provided, that neither the order nor the recommendation of the board, nor any accident report filed with the board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3031, R. C. M. 1921.

3032. When rate upon place may be advanced fifty per cent. If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this act, and such employer shall be under compensation plan No. 3, the board, in addition to any other penalty provided by this act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

History: En. Sec. 53, Ch. 96, L. 1915; re-en. Sec. 3032, R. C. M. 1921.

3033. Violation of safety provisions a misdemeanor. Every employer, employee, or other person, who either individually or acting as an officer, agent, or employee of a corporation, or other person, violates any safety provisions contained in this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

History: En. Sec. 54, Ch. 96, L. 1915; re-en. Sec. 3033, R. C. M. 1921.

CHAPTER 257

CONSOLIDATION OF BOILER AND MINE INSPECTOR UNDER CONTROL OF INDUSTRIAL ACCIDENT BOARD

- Section 3034. Consolidation boiler, mine and coal mine inspectors.
 3035. Same—appointment by industrial accident board.
 3036. Salaries of inspectors.
 3037. Districting of state for purposes of boiler inspection—rules and regulations—reports.
 3038. Inspection fees.
 3039. Laws continued in force and repealed.

3034. Consolidation boiler, mine and coal mine inspectors. The offices of inspector of boilers, the office of inspector of mines, and the office of state coal mine inspector are hereby combined and placed under the general supervision of the industrial accident board.

History: En. Sec. 1, Ch. 92, L. 1917; **References**
 amd. Sec. 1, Ch. 47, L. 1921; re-en. Sec. State ex rel. Nagle v. Page, 98 M 14, 37
 3034, R. C. M. 1921. P 2d 575.

3035. Same—appointment by industrial accident board. The industrial accident board shall appoint not to exceed four inspectors of boilers, one coal mine inspector and two inspectors of quartz mines, all of whose terms of office shall be at the pleasure of the industrial accident board.

History: En. Sec. 2, Ch. 92, L. 1917; **References**
 amd. Sec. 2, Ch. 47, L. 1921; re-en. Sec. State ex rel. Nagle v. Page, 98 M 14, 37
 3035, R. C. M. 1921. P 2d 575.

3036. Salaries of inspectors. The said officers shall receive such annual salaries to be fixed by the industrial accident board, and approved by the governor; all of said officers to be paid monthly.

History: En. Sec. 3, Ch. 92, L. 1917;
re-en. Sec. 3036, R. C. M. 1921.

References
State ex rel. Nagle v. Page, 98 M 14, 37
P 2d 575.

3037. Districting of state for purposes of boiler inspection—rules and regulations—reports. The industrial accident board shall district the state for boiler inspection and shall assign one inspector of boilers to each such district, and may from time to time change the boundaries of said districts and change said inspector of boilers to other districts, and said board shall have the power and it shall be its duty to provide rules and regulations under which said inspectors of boilers, inspectors of mines, and coal mine inspector shall perform their duties; and the board may require them, in addition to their statutory duties, to make the annual inspections, reports, and collections required by the safety provisions of sections 3017 to 3019, 3021, 3022, and 3023 of this code.

History: En. Sec. 4, Ch. 92, L. 1917;
re-en. Sec. 3037, R. C. M. 1921.

References
State ex rel. Nagle v. Page, 98 M 14, 37
P 2d 575.

3038. Inspection fees. All fees collected by the inspectors of boilers, the inspectors of mines, and the coal mine inspector shall remain the same in amounts as now fixed by law, and when same are collected they shall be paid into the state treasury and credited to the industrial administration fund as other inspection fees of the industrial accident board are now paid and credited.

History: En. Sec. 5, Ch. 92, L. 1917;
re-en. Sec. 3038, R. C. M. 1921.

References
State ex rel. Nagle v. Page, 98 M 14, 37
P 2d 575.

3039. Laws continued in force and repealed. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, inspector of steamboats, inspectors of mines, and coal mine inspector, not inconsistent with the provisions of this act, are hereby continued in full force and effect, and all other acts and parts of acts contrary to the provisions of this act are hereby repealed.

History: En. Sec. 55, Ch. 96, L. 1915;
amd. Sec. 6, Ch. 92, L. 1917; re-en. Sec.
3039, R. C. M. 1921.

References
State ex rel. Nagle v. Page, 98 M 14, 37
P 2d 575.

CHAPTER 258

REPORT OF ALIEN EMPLOYEES TO INDUSTRIAL ACCIDENT BOARD

- Section 3040. Reports of aliens employed to be made quarterly to industrial accident board.
3041. Blank forms for reports to be furnished.
3042. Duty of employees to furnish information.
3043. Rules and regulations—failure to comply with law a misdemeanor.

3040. Reports of aliens employed to be made quarterly to industrial accident board. It shall hereafter be the duty of every person, association, or corporation employing more than fifty persons at one time, within the state of Montana, to make out and file with the industrial accident board

a regular quarterly report showing the names, ages, and residence of all their employees who are not citizens of the United States, and also of all employees who do not read and speak the English language. All such reports shall be made upon printed blank forms to be furnished by the industrial accident board, and shall in addition to the foregoing facts disclose the following, to-wit:

1. The country of which said employee is a citizen;
2. The period of time which said employee has resided in the United States;
3. The period of time which said employee has been in the service of said employer;
4. Whether said employee be married or single, and if married, the residence of employee's wife and family;
5. What steps, if any, employee has taken to become a citizen of the United States;
6. What steps, if any, employee has taken to familiarize himself with the English language;
7. Such further and additional facts and information as shall be prescribed and required by said board.

History: En. Sec. 1, Ch. 134, L. 1919; re-en. Sec. 3040, R. C. M. 1921.

3041. Blank forms for reports to be furnished. It shall be the duty of the industrial accident board to prepare, or cause to be prepared, all blank printed forms that shall be necessary to comply with the provisions hereof, which said blanks shall be furnished to all said employers, upon application therefor to said industrial accident board.

History: En. Sec. 2, Ch. 134, L. 1919; re-en. Sec. 3041, R. C. M. 1921.

3042. Duty of employees to furnish information. For the purpose of carrying out the provisions of this act, all employers of labor are hereby designated, for the purpose of receiving the information provided for in this act, agents and representatives of the industrial accident board, and it shall be the duty of all employees of such employers to furnish to the employers, upon their request, for and on behalf of said industrial accident board, all information necessary to enable the employers to make out and furnish the report or reports required by this act. In case of the failure or refusal of any employee to furnish to his employer the information provided for in this act, such fact shall be reported by the employer to the industrial accident board, and the industrial accident board is hereby authorized and empowered to cause such employee to appear before the industrial accident board, at such time and place as they may determine, and furnish the information required under the provisions of this act.

History: En. Sec. 3, Ch. 134, L. 1919; re-en. Sec. 3042, R. C. M. 1921.

3043. Rules and regulations—failure to comply with law a misdemeanor. The industrial accident board shall have full power and authority to make and prescribe all reasonable rules and regulations, and to prescribe all necessary penalties to secure a strict compliance with the provisions of this act, and every employer or employee or other person, who shall fail or refuse to comply with the provisions of this act, or with any

rule or regulation of the industrial accident board, shall be deemed guilty of a misdemeanor.

History: En. Sec. 4, Ch. 134, L. 1919; re-en. Sec. 3043, R. C. M. 1921.

CHAPTER 259

PREFERENCE OF MONTANA RESIDENT LABOR IN PUBLIC WORKS CONTRACTS

Section 3043.1. Preference of Montana labor in public works—wage scale—not in conflict with federal statutes.

3043.2. Labor and bona fide resident defined.

3043.3. Penalty for violation of act.

3043.1. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes. In all contracts hereafter let for state, county, municipal and school construction, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages in effect as paid in the county seat of the county in which the work is being performed and no contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

History: En. Sec. 1, Ch. 102, L. 1931.

3043.2. Labor and bona fide resident defined. Labor is hereby defined to be all services performed in the construction, repair or maintenance of all state, county, municipal and school work and does not include engineering, superintendence, management, or office or clerical work.

A bona fide resident of Montana is hereby declared to be a person, who at the time of his said employment and immediately prior thereto, has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state has been coupled with intention to make it his home. Sojourners, or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor, shall under no circumstance be deemed to be bona fide residents of Montana within the meaning and for the purpose of this act.

History: En. Sec. 2, Ch. 102, L. 1931.

3043.3. Penalty for violation of act. If any person, firm or corporation shall fail to comply with the provisions of this act the state, county, municipal or school officers who have executed the contract shall retain five hundred dollars (\$500.00) of the contract price as liquidated damages for the violation of the terms of the contract and said money shall be credited to the proper funds of the state, county, municipal or school districts. In all contracts entered into under the provisions of this act at least five hundred

dollars (\$500.00) of the contract price shall be withheld at all times until the termination of the contract.

History: En. Sec. 3, Ch. 102, L. 1931.

CHAPTER 260

VOCATIONAL REHABILITATION AND EDUCATION

- Section 3044. Acceptance of act of congress for vocational rehabilitation.
3045. Custody of moneys in vocational rehabilitation fund.
3046. Designation of state board to co-operate with federal.
3047. Duty of state board.
3048. Persons disabled in industry defined.
3049. Powers and duties of state board.
3050. Receipt of gifts and donations.
3051. Appropriations.
3051.1. Maintenance allowance for persons receiving vocational training.
3051.2. Amount of maintenance allowance to be paid.
3051.3. Payments, how made.

3044. Acceptance of act of Congress for vocational rehabilitation. The state of Montana does hereby, through its legislative authority, accept the provisions and benefits of the act of Congress, entitled: "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," Approved June 2, 1920, and will observe and comply with all the requirements of such act.

History: En. Sec. 1, Ch. 149, L. 1921; re-en. Sec. 3044, R. C. M. 1921.

3045. Custody of moneys in vocational rehabilitation fund. The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the Congress of the United States for the vocational rehabilitation of persons disabled in industry, or otherwise, and is authorized to receive gifts and donations and provide for the proper custody of the same said moneys, together with all the money herein appropriated, and all other moneys otherwise provided by law for the said purpose, shall constitute a fund to be called the vocational rehabilitation fund; and the state treasurer shall make disbursement therefrom upon the order of the state board for vocational education.

History: En. Sec. 2, Ch. 149, L. 1921; re-en. Sec. 3045, R. C. M. 1921.

3046. Designation of state board to co-operate with federal. The board heretofore designated or created as the state board for vocational education to co-operate with the federal board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917, is hereby designated as the state board for the purpose of co-operating with the said federal board in carrying out the provisions and the purposes of said federal act, providing for the vocational rehabilitation of persons disabled in industry or otherwise.

History: En. Sec. 3, Ch. 149, L. 1921; re-en. Sec. 3046, R. C. M. 1921.

3047. Duty of state board. It shall be the duty of the state board empowered to co-operate as aforesaid, and the state industrial accident board to formulate a plan of co-operation in accordance with the provisions of this act and said act of Congress, such plan to become effective when approved by the governor of the state.

History: En. Sec. 4, Ch. 149, L. 1921; re-en. Sec. 3047, R. C. M. 1921.

3048. Persons disabled in industry defined. "Persons disabled in industry or otherwise," shall, for the purposes of this act, mean any person, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, disease, or injury, is or may be expected to be totally or partially incapacitated for remunerative occupation, and who may reasonably be expected to be fit to engage in a remunerative occupation after completing a vocational rehabilitation course. To be eligible to receive vocational rehabilitation from the state board, such persons must have been domiciled within the state for one year or more, or reside in the state at the time of sustaining disability. No portion of any appropriations made for the purposes of this act shall be used by any institution for handicapped persons except for the special training of such individuals entitled to the benefits of this act as shall be determined by the state board.

History: En. Sec. 5, Ch. 149, L. 1921; re-en. Sec. 3048, R. C. M. 1921.

3049. Powers and duties of state board. The state board heretofore created as the state board for vocational education is hereby authorized and directed to co-operate with the federal board for vocational education in the administration of said act of Congress; to administer any legislation pursuant thereto enacted by this state and direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise; to appoint such assistants as may be necessary to administer the provisions of this act and said act of Congress in this state and fix the compensation of such assistants; to make studies and investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and to formulate plans for the vocational rehabilitation of such persons; to make surveys with the co-operation of the state industrial accident board, to ascertain the names and condition of persons disabled in industry or otherwise within the state; to provide that all such persons shall be properly visited by representatives of the state board with the view of determining whether or not vocational rehabilitation is feasible; to acquaint all such persons susceptible of vocational rehabilitation with the rehabilitation facilities afforded by the state and to counsel them regarding the selection of a suitable vocation; to register all such persons electing to take advantage of the benefits of rehabilitation offered and to prescribe and provide such training as may be necessary to insure their vocational rehabilitation; to maintain a record of all such persons, together with the measures taken for their rehabilitation; to utilize in the rehabilitation of persons disabled in industry or otherwise such existing educational facilities of the state as may be advisable and practicable, including public and private educational institutions, public or private establishments, plants, factories, etc., and the services of persons specially qualified for the instruction of physically handicapped persons; to promote and aid in the establishment of schools and classes for the vocational rehabilitation of persons disabled in industry or otherwise; to supervise the training of such persons and confer with their relatives and other persons interested concerning any matter affecting their vocational rehabilitation; to provide for the placement in suitable gainful occupa-

tions of persons completing courses of training provided by the board, including supervision for a reasonable time after placement; to utilize the facilities of such state agencies, both public and private, as may be practicable in securing employment for such persons and any such public agency is hereby authorized and directed to co-operate with the state board for vocational education for the purpose stated: to co-operate with any agency of the federal government or of the state or of any county or other municipal authority within the state or any other agency, public or private, in carrying out the purposes of this act; to make such rules and regulations as may be necessary for the administration of this act and said act of Congress within the state and report annually to the governor the conditions of vocational rehabilitation within the state, such report to designate the educational institutions, establishments, plants, factories, etc., in which training is being given, and to contain a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise.

History: En. Sec. 6, Ch. 149, L. 1921; re-en. Sec. 3049, R. C. M. 1921.

3050. Receipt of gifts and donations. The state board for vocational education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the said state board are proper and consistent with the provisions of this act. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to the governor of the state by said state board.

History: En. Sec. 7, Ch. 149, L. 1921; re-en. Sec. 3050, R. C. M. 1921.

3051. Appropriations. There shall be appropriated a sum of money available for each fiscal year not less than the maximum sum which may be allotted to the state for the purpose set forth in said federal act, and there is hereby appropriated for such purposes out of any moneys in the treasury not otherwise appropriated for each of the fiscal years ending 1922 and 1923 respectively, the sum of ten thousand dollars.

History: En. Sec. 8, Ch. 149, L. 1921; re-en. Sec. 3051, R. C. M. 1921.

3051.1. Maintenance allowance for persons receiving vocational training. A disabled person receiving vocational training under the direction of the state rehabilitation bureau may, in addition to the benefits described in section 3044 to 3051 inclusive, be granted a monthly maintenance allowance while in training. This allowance shall be for the purpose of assisting the person receiving such training to meet his actual living expenses and shall never, in the case of a single person without dependents exceed forty dollars (\$40.00) per month, nor in the case of a married person or a single person with one or more dependents exceed sixty dollars (\$60.00) per month; nor in any case shall the total payment for maintenance purposes exceed the sum of the maximum monthly allowance for a period of twelve months. Maintenance shall not be paid where:

(a) The person receiving such training is drawing sufficient compensation from the state industrial accident board or from any other state, county, municipal or federal board or commission to cover his living expense.

(b) The person receiving such training is a minor and has parents who are able to support him while in training.

(c) The person receiving such training has relatives, friends, or a former employer able and willing to maintain him.

(d) The person receiving such training is financially able to support himself, or has, or can obtain part time employment, without injury to his health or training, which will enable him to get along without outside assistance.

(e) The person receiving such training is taking a correspondence course only.

(f) The person receiving such training is taking a college course in one of our institutions for higher education.

(g) The person receiving such training and his parents or guardian (in the event such person is a minor) have not filed, with his application, an affidavit showing what property he or his parents own, and also showing that his relatives, friends or former employer are unwilling to maintain him.

History: En. Sec. 1, Ch. 20, L. 1925; amd. Sec. 1, Ch. 1, L. 1927.

3051.2. Amount of maintenance allowance to be paid. Only as much of the maximum maintenance allowance as is actually needed shall be paid. The beneficiary's income and resources shall be ascertained and his allowance from the state adjusted accordingly. A person in an industrial establishment shall receive no maintenance from the rehabilitation bureau if his wages from the firm equal his living expenses. A fair and equitable adjustment will at all times be made in cases where a person receives a wage, salary or income which can and should be applied in defraying the cost of board, lodging and other necessary expenses while in training.

History: En. Sec. 2, Ch. 20, L. 1925; amd. Sec. 1, Ch. 1, L. 1927.

3051.3. Payments, how made. That portion of the money appropriated for vocational rehabilitation purposes which is actually necessary may be drawn upon in making the payments described above; provided that no part of the funds appropriated to match the allowance received by the state from the federal board for vocational education may be so used. Payments will be made monthly by warrants issued by the state auditor upon order of the state agent for civilian rehabilitation.

History: En. Sec. 3, Ch. 20, L. 1925; amd. Sec. 1, Ch. 1, L. 1927.

CHAPTER 261

STATE BOARD OF ARBITRATION AND CONCILIATION

- Section 3052. State board of arbitration and conciliation.
3053. Who may be appointed.
3054. Oath of members and organization of board.
3055. Settlement of controversies.
3056. Application, how made—proceedings by board—expert assistants.

- 3057. Decisions of board—report to governor.
- 3058. The decision—when binding.
- 3059. Parties may agree to special board of arbitration.
- 3060. Compensation.

3052. State board of arbitration and conciliation. There is a state board of arbitration and conciliation consisting of three members, whose term of office is two years and until their successors are appointed and qualified. The board must be appointed by the governor, with the advice and consent of the senate. If a vacancy occurs at any time the governor shall appoint some one to serve out the unexpired term, and he may in like manner remove any member of said board.

History: A territorial board of arbitration and conciliation, created by act of February 28, 1887, 5th Division Compiled Statutes 1887, sections 82 to 88, was superseded by what are now sections 3052 to 3060.

This section en. Sec. 3330, Pol. C. 1895; re-en. Sec. 1670, Rev. C. 1907; re-en. Sec. 3052, R. C. M. 1921.

3053. Who may be appointed. One of the board must be an employer, or selected from some association representing employers of labor, and one of them must be a laborer, or selected from some labor organization, and not an employer of labor, and the other must be a disinterested citizen.

History: En. Sec. 3331, Pol. C. 1895; re-en. Sec. 1671, Rev. C. 1907; re-en. Sec. 3053, R. C. M. 1921.

3054. Oath of members and organization of board. The members of the board must, before entering upon the duties of their office, take the oath required by the constitution. They shall at once organize by the choice of one of their number as chairman. Said board may appoint and remove a clerk of the board, who shall receive such compensation as may be allowed by the board, but not exceeding five dollars per day for the time employed. The board shall, as soon as possible after its organization, establish such rules or modes of procedure as are necessary, subject to the approval of the governor.

History: En. Sec. 3332, Pol. C. 1895; re-en. Sec. 1672, Rev. C. 1907; re-en. Sec. 3054, R. C. M. 1921.

3055. Settlement of controversies. Whenever any controversy or dispute, not involving questions which may be the subject of a civil action, exists between an employer (if he employs twenty or more in the same general line of business in the state) and his employees, the board must, on application as is hereinafter provided, visit the locality of the dispute and make inquiry into the cause thereof, hear all persons interested therein, who may come before them, advise the respective parties what, if anything, ought to be done, by either or both, to adjust said dispute, and the board must make a written decision thereon. The decision must at once be made public, and must be recorded in a book kept by the clerk of the board, and a statement thereof published in the annual report, and the board must cause a copy thereof to be filed with the clerk of the county where the dispute arose.

History: En. Sec. 3333, Pol. C. 1895; re-en. Sec. 1673, Pol. C. 1907; re-en. Sec. 3055, R. C. M. 1921.

3056. Application, how made—proceedings by board—expert assistants. The application to the board of arbitration and conciliation must be signed

by the employer, or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent, or by both parties, and shall contain a concise statement of the grievances complained of, and a promise to continue on in business or at work without any lockout or strike until the decision of said board, if it shall be made within four weeks of the date of filing said application. When an application is signed by an agent claiming to represent a majority of such employees, the board shall satisfy itself that such agent is duly authorized in writing to represent such employees, but the names of the employees giving such authority shall be kept secret by said board. As soon as may be after the receipt of said application, the secretary of said board shall cause public notice to be given for the time and place for the hearing thereon; but public notice need not be given when both parties to the controversy join in the application and present therewith a written request that no public notice be given. When such request is made, notice shall be given to the parties interested in such manner as the board may order; and the board may, at any stage of the proceedings, cause public notice to be given, notwithstanding such request. When notice has been given as aforesaid, each of the parties to the controversy, the employer on one side, and the employees interested on the other side, may in writing nominate, and the board may appoint, one person to act in the case as expert assistant to the board. The two persons so appointed shall be skilled in and conversant with the business or trade concerning which the dispute has arisen. It shall be their duty, under the direction of the board, to obtain and report to the board information concerning the wages paid, the hours of labor, and the methods and grades of work prevailing in manufacturing establishments, or other industries or occupations, within the state, of a character similar to that in which the matters in dispute have arisen. Said expert assistants shall be sworn to the faithful discharge of their duty; such oath to be administered by any member of the board, and a record thereof shall be preserved with the record of the proceedings in the case. They shall be entitled to receive from the treasury of the state such compensation as shall be allowed and certified by the board not exceeding.....dollars per day, together with all necessary traveling expenses. Nothing in this act shall be construed to prevent the board from appointing such other additional expert assistant or assistants as it may deem necessary, who shall be paid in like manner. Should the petitioner or petitioners fail to perform the promise made in said application, the board shall proceed no further thereupon without the consent of the adverse party. The board shall have power to summon as witness any operative or employee in the department of business affected, and any person who keeps the records of wages earned in those departments, and to examine them under oath, and to require the production of books containing the record of wages paid. Summons may be signed and oaths administered by any member of the board.

History: En. Sec. 3334, Pol. C. 1895; re-en. Sec. 1674, Rev. C. 1907; re-en. Sec. 3056, R. C. M. 1921.

3057. Decisions of board—report to governor. Upon the receipt of said application and after such notice, the board shall proceed as before pro-

vided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year.

History: En. Sec. 3335, Pol. C. 1895; re-en. Sec. 1675, Rev. C. 1907; re-en. Sec. 3057, R. C. M. 1921.

3058. The decision—when binding. Any decision made by the board is binding upon the parties who join in the application for six months, or until either party has given the other notice in writing of his intention not to be bound by the same at the expiration of sixty days therefrom. The notice must be given to employees by posting the same in three conspicuous places in the shop, office, factory, store, mill, or mine where the employees work.

History: En. Sec. 3336, Pol. C. 1895; re-en. Sec. 1676, Rev. C. 1907; re-en. Sec. 3058, R. C. M. 1921.

3059. Parties may agree to special board of arbitration. The parties to any controversy or difference as described in section 3055 of this code may submit the matters in dispute, in writing, to a local board of arbitration and conciliation; such board may be either mutually agreed upon, or the employer may designate one of the arbitrators, the employees, or their duly authorized agent, another, and the two arbitrators so designated may choose a third, who shall be chairman of the board. Such board shall, in respect to the matters referred to it, have and exercise all the powers which the state board might have and exercise, and its decision shall have whatever binding effect may be agreed upon by the parties to the controversy in written submission. The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the state board. The decision of such board shall be rendered within ten days of the close of any hearing held by it; such decision shall at once be filed with the clerk of the county in which the controversy or difference arose, and a copy thereof shall be forwarded to the state board and entered on its records. Each of such arbitrators shall be entitled to receive from the treasury of the county in which the controversy or difference that is the subject of the arbitration exists, if such payment shall be approved by the commissioners of said county, the sum of three dollars for each day of actual service, not exceeding ten days for any one arbitration. Whenever it is made to appear to the mayor of any city or two commissioners of any county, that a strike or lockout such as described hereafter in this section is seriously threatened or actually occurs, the mayor of such city, or said commissioners of such county, shall at once notify the state board of the fact. Whenever it shall come to the knowledge of the state board, either by notice from the mayor of a city, or two or more commissioners of a county, as provided in this section, or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any city or county of this state, involving an employer and his present or past employees, if at the time he is employing or up to the occurrence of the strike or lockout was employing not less than twenty persons in the same general line of business in any city, town, or county in

this state, it shall be the duty of the state board to put itself in communication as soon as may be with such employer and employees, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them, providing that a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation as above provided, or to the state board; and said state board may, if it deems it advisable, investigate the cause or causes of such controversy, and ascertain which party thereto is mainly responsible or blameworthy for the existence or continuance of the same, and may make and publish a report finding such cause or causes, and assigning such responsibility or blame. The board shall have the same powers for the foregoing purposes as are given it by section 3055 of this code. Witnesses summoned by the state board shall be allowed the sum of fifty cents for each attendance, and the further sum of twenty-five cents for each hour of attendance in excess of two hours, and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be certified to the state board of examiners for auditing, and the same shall be paid as other expenses of the state from any moneys in the state treasury.

History: En. Sec. 3337, Pol. C. 1895; re-en. Sec. 1677, Rev. C. 1907; re-en. Sec. 3059, R. C. M. 1921.

3060. Compensation. The arbitrators hereby created must be paid five dollars for each day of actual service and their necessary traveling expenses and necessary books or records, to be paid out of the treasury of the state, as by law provided.

History: En. Sec. 3338, Pol. C. 1895; re-en. Sec. 1678, Rev. C. 1907; re-en. Sec. 3060, R. C. M. 1921.

CHAPTER 262

PROTECTION OF STREET-CAR EMPLOYEES

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| Section | 3061. | Enclosures for street-car motormen. |
| | 3062. | Penalties. |
| | 3063. | Duties of county attorney to prosecute violations of this act. |
| | 3064. | Vestibules of street-cars to be heated. |
| | 3065. | Penalty for violation of act. |
| | 3066. | Brakes on street-cars. |
| | 3067. | Penalty for failure to provide. |

3061. Enclosures for street-car motormen. It shall be unlawful for any person or persons, partnership or corporation, or any agent or employee of such person, or persons, or any officer, agent or employee of such co-partnership or corporation, owning or operating any street-railway in this state, using steam, cable, electric or other cars to cause, permit or require to be used upon said railway between November first of each year and May first of the following year any car or cars upon which the constant service, attention, or care of any employee is required, unless such car or cars shall be provided with a proper and sufficient enclosure constructed of wood, iron, glass or other suitable material, in such manner as to protect such employee or employees from exposure to the inclem-

encies of the weather. Such enclosures shall be so constructed as not to obscure the vision of the person operating the car, and during a fog or fall of snow sufficient to obscure the view of the motorman he may be allowed to remove the glass in his immediate front so that such obstruction shall not prevent the safe operation of the car. The type of cars known as open cars or summer cars must be equipped with a wind-shield constructed of glass, iron, wood, or other suitable material extending completely across the front of said car to protect such employees from exposure to the inclemencies of the weather.

History: En. Sec. 1, Ch. 78, L. 1907; re-en. Sec. 1727, Rev. C. 1907; (see, also, Ch. 104, L. 1913); amd. Sec. 1, Ch. 51, L. 1921; re-en. Sec. 3061, R. C. M. 1921.

3062. Penalties. Any person or persons, partnership, or corporation owning, operating, or superintending, or managing any such line of street-railway, or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars or more than one hundred dollars. Each and every day that any such person or persons cause or permit any of their employees to operate such cars in violation of the provisions of the preceding section shall be deemed a separate offense.

History: En. Sec. 3, Ch. 78, L. 1907; Sec. 1729, Rev. C. 1907; re-en. Sec. 3062, R. C. M. 1921.

3063. Duties of county attorney to prosecute violations of this act. It is hereby made the duty of the county attorney of any county in which any street-railway is situated and operated, upon information given to him by any person that any person or persons, partnership, or corporation has violated any of the provisions of this act, to promptly prosecute such person or persons, partnership, or corporation for such violation.

History: En. Sec. 4, Ch. 78, L. 1907; Sec. 1730, Rev. C. 1907; re-en. Sec. 3063, R. C. M. 1921.

3064. Vestibules of street-cars to be heated. From and after November 1, 1913, it shall be unlawful for any corporation, person, or association, owning or controlling or operating any street-railway, electric car, or trolley-car within the state of Montana, to run or operate its cars in the regular service of carrying passengers, during the months of November, December, January, February, and March, without first providing that the vestibule of such cars shall be heated in the same manner as the interior of said cars at all times.

History: En. Sec. 1, Ch. 44, L. 1913; re-en. Sec. 3064, R. C. M. 1921.

3065. Penalty for violation of act. Any corporation, person, or association owning, controlling, or operating any street-railway, electric, or trolley-car, failing to comply with the provisions of this act, shall be liable to a fine of ten dollars per car for each day operated in violation of the provisions of this act.

History: En. Sec. 2, Ch. 44, L. 1913; re-en. Sec. 3065, R. C. M. 1921.

3066. Brakes on street-cars. On or before September 1, 1913, all double-track street-railway, electric cars or trolley-cars, so called, conveying

passengers in the state of Montana, shall be fitted with at least two independently operating brakes, one of which must be mechanical, such as air-brake, electric short-circuiting brake, or electric-magnetic brake.

History: En. Sec. 1, Ch. 80, L. 1913; re-en. Sec. 3066, R. C. M. 1921.

3067. Penalty for failure to provide. Any corporation or person owning and operating street-railway cars, electric or trolley cars, failing to comply with the provisions of this act, shall be liable to a fine of ten dollars per car for each day operated without such equipment.

History: En. Sec. 2, Ch. 80, L. 1913; re-en. Sec. 3067, R. C. M. 1921.

CHAPTER 263

HOURS OF LABOR

Section 3068.	Hours of labor—hoisting engineers.
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3068. Hours of labor—hoisting engineers. On and after the first day of May, A. D. 1903, it shall be unlawful for any person or persons, company, or corporation, to operate or handle, or to induce, persuade, or prevail upon any person or persons to operate or handle, for more than eight hours in twenty-four hours of each day, any hoisting-engine at or in any mine. This act shall apply only to such plants as are in continuous operation or are operated sixteen or more hours in twenty-four hours of each day, or at or in any mine where said hoisting-engine develops fifteen or more horsepower, or at or in any mine wherein there are fifteen or more men employed underground in twenty-four hours of each day; provided, however, that the provisions of this act shall not apply to any person or persons operating any hoisting-engine more than eight hours in each twenty-four hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

History: En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R. C. M. 1921.

3069. Penalties. Any person or persons, company, or corporation, who shall violate any of the provisions of this act, shall, upon conviction, be punished by a fine of not less than ten dollars nor more than one hundred dollars; and each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this act shall be considered a separate and distinct offense, and shall be punishable as such.

History: En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R. C. M. 1921.

3069.1. Hours of labor of drivers and attendants of motor busses. Drivers or attendants of motor busses employed in the state of Montana, shall not be employed for more than eight (8) hours in the twenty-four (24) hour period and drivers or attendants of motor busses shall be allowed a rest of at least twelve (12) hours between the completion of their services in any twenty-four (24) hour period and the beginning of their services in the next succeeding twenty-four (24) hour period.

Provided, the provisions of this act shall not be effective when life is in danger of destruction or in case of danger of property in imminent danger of destruction, or in case of delay due to accident or unpassable roads, or abnormal road conditions, snow blockades, or shall not affect the delay of mails for said drivers or attendants.

History: En. Sec. 1, Ch. 76, L. 1935.

3069.2. Attendant defined—penalty for violation—liability for damages resulting from violations. Attendants, for the purpose of this act, are defined as any employee engaged for a portion of the twenty-four (24) hour period in a day driving or repairing a motor bus, and who is required to remain on said vehicle as a relief driver or mechanic for time in excess of the eight (8) hour period, of which he shall be rightly employed. Any employer or supervisor in charge of employee who shall require a driver or attendant as above defined to labor contrary to the provisions of this act shall be declared guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00), or more than six hundred dollars (\$600.00), or by imprisonment of not less than thirty (30) days or more than seven (7) months or both such fine and imprisonment. All motor bus companies operating lines in this state shall be liable in damage for all injuries to the person or persons resulting in the violation of the provisions of said act.

History: En. Sec. 2, Ch. 76, L. 1935.

3069.3. Computation of hours. In computing the number of hours of employment made by the provisions of this act, evidence may be introduced showing that part of said time shall be consumed prior to entry within the state of Montana.

History: En. Sec. 3, Ch. 76, L. 1935.

3070. Hours of labor of jailors in certain counties. From and after the first day of April, 1909, eight hours shall constitute a day's work for jailors in counties of the first, second, and third classes, except in cases of emergency and when the peace and safety of the community require

that such jailors work for a longer period than eight hours in any twenty-four.

History: En. Sec. 1, Ch. 93, L. 1909; re-en. Sec. 3070, R. C. M. 1921.

References

Cited or applied as section 4063, polit-

ical code, before amendment, in *Jobb v. County of Meagher*, 20 M 424, 435, 51 P 1034; as section 3119, revised codes, as amended, in *State ex rel. Hay v. Hindson*, 40 M 353, 106 P 362.

3071. Hours of labor—underground miners. The period of employment of working-men in all underground mines or workings, including railroad or other tunnels, shall be eight hours per day, except in cases of emergency where life and property is in imminent danger.

History: En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R. C. M. 1921.

References

Wirta v. North Butte Mining Co. et al., 64 M 279, 289, 210 P 332.

3072. Same—smeltermen. The period of employment of working-men in smelters, stamp-mills, sampling works, concentrators, and all other institutions for the reduction of ores, and refining of ores or metals, shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

History: En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R. C. M. 1921.

3073. Penalty. Any person or persons, body corporate, agent, manager, or employer, who shall violate any of the provisions of sections 3071 and 3072, shall be guilty of a misdemeanor, and upon conviction thereof for each offense, be subject to a fine of not less than one hundred dollars (\$100.00) or more than six hundred dollars (\$600.00), or by imprisonment in the county jail for a period of not less than one month, or more than seven months, or by both such fine and imprisonment.

History: En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R. C. M. 1921; amd. Sec. 1, Ch. 116, L. 1929.

3073.1. Hours of labor in retail stores—application of provisions. A period of eight (8) hours shall constitute a day's work and a period of not to exceed forty-eight (48) hours shall constitute a week's work in all cities and towns having a population of twenty-five hundred (2500), or over, for all persons employed in retail stores, and in all leased businesses where the lessor dictates the price, also kind of merchandise that is sold, and the hours and conditions of operation of the business, all persons employed in delivering goods sold in such stores, all persons employed in wholesale warehouses used for supplying retail establishments with goods, and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

History: En. Sec. 1, Ch. 8, Ex. L. 1933.

3073.2. Penalties for violations. Any person, corporation, agent, manager or employer who shall violate any of the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) or more than six hundred dollars (\$600.00), or by imprisonment in the county jail for

not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 8, Ex. L. 1933.

3073.3. Act not applicable to pharmacists. The provisions of this act shall not apply to registered pharmacists or assistant pharmacists.

History: En. Sec. 3, Ch. 8, Ex. L. 1933.

3074. Hours of telephone operators. On all lines of public telephones, operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons, to run or operate a telephone board or boards for more than nine hours in twenty-four hours, in cities or towns having a population of three thousand inhabitants, or over; provided, however, that the provisions of this act shall not apply to any person or persons, operator or operators, operating any telephone board or boards more than nine hours in each twenty-four for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

History: En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R. C. M. 1921.

3075. Penalty for violation of preceding section. Any owner, lessee, company, or corporation, who shall violate any of the provisions of this act shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this act shall be considered a separate and distinct offense and shall be punished as such.

History: En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R. C. M. 1921.

3076. Hours of labor for female employees. No female shall be employed in any manufacturing, mechanical, or mercantile establishment, telephone exchange room, or office, or telegraph office, laundry, hotel, or restaurant in this state, for more than eight hours in any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four of any one day; provided, that females may be employed in retail stores to work not to exceed ten hours in any one day for one week immediately preceding Christmas day.

History: En. Sec. 1, Ch. 108, L. 1913; amd. Sec. 1, Ch. 18, L. 1917; re-en. Sec. 1, Ch. 70, L. 1917; re-en. Sec. 3076, R. C. M. 1921.

3077. Seats for female employees. Every employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

History: En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R. C. M. 1921.

3078. Violation of two preceding sections a misdemeanor—penalty. Any employer who shall require any female to work in any of the places mentioned in section 3076, more than the number of hours provided in

this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats, as provided in section 3077, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars nor more than two hundred dollars, or be imprisoned in the county jail for a period of not less than ten nor more than sixty days, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R. C. M. 1921.

3079. Hours of labor for state and municipal governments, mines, mills, smelters. A period of eight hours shall constitute a day's work in all works, and undertakings carried on or aided by any municipal, county, or state government, first class school districts, and on all contracts let by them, and for all janitors, except in court houses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state governments, school districts of first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing and treatment of coal.

History: En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R. C. M. 1921; amd. Sec. 2, Ch. 116, L. 1929. Cal. Pol. C. Secs. 3244, 3245.

Constitutionality

This statute, prior to its amendment, was held to be constitutional. *State v. Livingston Concrete etc. Mfg. Co.*, 34 M 570, 87 P 980.

Operation and Effect

If a statute makes a requirement, or prohibits a thing, for the benefit of a person or class of persons, one injured by reason of a violation of it, if free from fault himself, is entitled to maintain an action against him by whose disobedience he has suffered injury; and this is true whether the statute is penal in its character or not, a violation of the statute

being negligence per se, or legal negligence. *Melville v. Butte-Balaklava Copper Co.*, 47 M 1, 6, 130 P 441. See *Kelley v. John R. Daily Co.*, 56 M 63, 73, 181 P 326.

Under the rule that an action does not lie at the suit of one who must base his claim, in whole or in part, on the violation of a criminal or penal law of the state, a miner who was killed while working in violation of a statute providing that eight hours shall constitute a day's work in mines, under penalty of fine and imprisonment in the county jail, could not, if he had survived his injuries, recover damages in an action brought for that purpose. *Melville v. Butte-Balaklava Copper Co.*, 47 M 1, 7, 130 P 441.

References

Cited or applied as section 1739, revised codes, before amendment, in *State v. Hughes*, 38 M 468, 471, 100 P 610.

3080. Penalty. Every person, corporation, stock company, or association of persons who violate any of the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than six hundred dollars (\$600.00), or by imprisonment in the county jail for not less than thirty days nor more than seven months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 50, L. 1905; re-en. Sec. 2, Ch. 108, L. 1907; Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R. C. M. 1921; amd. Sec. 3, Ch. 116, L. 1929.

Operation and Effect

The inhibition contained in this section includes both employer and employee, and renders both subject to the penalty whenever the former causes the employee to work, and the latter works for a period longer than eight hours. *State v. Livingston Concrete etc. Mfg. Co.*, 34 M 570, 577, 87 P 980; *Melville v. Butte-Balaklava Copper Co.*, 47 M 1, 6, 130 P 441.

The person who occupies a position of authority over one engaged as an em-

ployee, and who exercises control over him, is the employer who comes within the prohibition of the eight-hour law. *State v. Hughes*, 38 M 468, 472, 100 P 610.

Id. One who does not sustain the relation of employer to any of the men employed by subcontractors is not answerable for the conduct of the latter in requiring their men to work more than eight hours per day.

3081. Railway employees—hours of labor. On all lines of steam railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed sixteen consecutive hours, or to be on duty for more than sixteen hours in the aggregate in any twenty-four hour period. At least eight hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

History: En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R. C. M. 1921.

Operation and Effect

Until congress has acted, the regulation of the hours of railway employees is a matter for state control, under the exercise of its police power to provide for the public safety and to preserve the health and lives of the employees, and a federal statute, effective at a future date, does not supersede existing state legislation. *State v. Northern Pac. Ry. Co.*, 36 M 582, 584, 93 P 945.

Evidence held insufficient to support a verdict finding the defendant railway company guilty of a violation of the provisions of this section and the following section, prohibiting railroads from requiring their trainmen to work for more than sixteen consecutive hours. *State v. Northern Pacific Ry. Co.*, 41 M 557, 558, 111 P 141.

In *Northern Pac. Ry. Co. v. State of Washington*, 222 U. S. 370, 56 L. Ed. 237, 32 Sup. Ct. 160, held the state loses control upon the enactment of a federal statute, though not effective until a subsequent date.

3082. Penalties. Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic, or other railroad or railway official, who shall order or require any locomotive engineer, locomotive fireman, conductor, trainman, operator, or agent acting as operator, to labor contrary to the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment of not less than thirty days or more than sixty days in the county jail; and all railroad or railway corporations operating lines of railroads or railways in whole or in part in this state shall be liable in damages for all injuries to any person or persons resulting from violations of the provisions of said section.

History: En. Sec. 2, Ch. 5, L. 1907; 1907, in State v. Northern Pacific Ry. Co., 36 M 582, 585, 93 P 945; as section 1742, revised codes in State v. Northern Pacific Ry. Co., 41 M 557, 558, 111 P 141.

References

Cited or applied as section 2, laws of

3083. Act not to apply to relief or wreck trains. The provisions of section 3081 of this code shall not apply to relief or wreck trains.

History: En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R. C. M. 1921.

3083.1. Hours of labor in cement plants, quarries and hydro-electric dams. A period of eight (8) hours shall constitute a day's work, except in cases of emergency where life and property is in imminent danger, for all persons employed in or about cement plants and at quarries and hydro-electric dams.

History: En. Sec. 1, Ch. 77, L. 1933.

3083.2. Penalties. Any person, corporation, agent, manager or employer who shall violate any of the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) or more than six hundred dollars (\$600.00), or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 77, L. 1933.

3083.3. Hours of labor in sugar refineries. A period of not to exceed eight (8) hours shall constitute a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life and property are in danger.

History: En. Sec. 1, Ch. 90, L. 1933.

3083.4. Penalties. Any person, corporation, agent, manager or employer who shall violate the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50), or more than six hundred dollars (\$600), or by imprisonment in the county jail for not less than thirty (30) days, nor more than seven (7) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 90, L. 1933.

3083.5. Exceptions. The provisions of this act shall not apply to beet receiving station employees, or superintendents, master mechanics, beet end, sugar end and steffan house foreman.

History: En. Sec. 3, Ch. 90, L. 1933.

CHAPTER 264

PAYMENT OF WAGES—PROTECTION OF DISCHARGED EMPLOYEES

Section 3084. Semi-monthly payment of wages.

3085. Penalty for failure to pay at times specified in law.

3086. Discharged employee—wages, when payable.

3087. Period within which employee may recover penalties.

3088. Contracts in violations of act void.

3089. Judgment for wages shall include attorney's fee.

- 3090. Equal pay for women for equivalent service.
- 3091. Violation of preceding section a misdemeanor—penalty.
- 3092. Protection of discharged employees.
- 3093. Blacklisting prohibited.
- 3094. Employee to be furnished reason for discharge.

3084. Semi-monthly payment of wages. From and after June 1, 1919, every employer of labor (except agricultural labor), whether a person, copartnership, or corporation, in the state of Montana, shall pay to his employee the wages earned each and every fifteen days in lawful money of the United States, or checks on banks convertible into cash on demand full face values thereof, and all such wages shall be due and payable, and shall be paid by such persons, copartnership, or corporation not later than the fifth and twentieth day of each calendar month for all such wages earned up to and within five days of the date of such payment; provided, however, that if at such time of payment any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter; provided further, that this act shall not affect any person, copartnership, or corporation, foreign or domestic, who shall have already established, and shall continue to maintain, a semi-monthly or weekly pay-day.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R. C. M. 1921.

Employer of Labor

Held, that the legislature in enacting this section, requiring employers of labor to make semi-monthly payment of wages, under penalty of five per cent of the wages due and unpaid, did not intend that

the act should apply to a school district as employer and a teacher, as employee, receiving a fixed compensation, and that therefore the court properly struck out of the complaint of a teacher in her action for breach of contract an allegation that plaintiff was entitled to the five per cent penalty. *McBride v. School District No. 2*, 88 M 110, 290 P 252.

3085. Penalty for failure to pay at times specified in law. Whenever any employer, whether a person, copartnership, or corporation, fails to pay any of his employees, as provided in the preceding section, then a penalty shall attach to such person, copartnership, or corporation, and become due such employees as follows: A sum equivalent to a penalty of five per cent. of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921.

3086. Discharged employee—wages, when payable. Whenever any employee is discharged from the employ of any such person, copartnership, or corporation, except agricultural, on leaving said employment, then all the unpaid wages of such employee shall immediately become due and payable on demand, and if such person, copartnership, or corporation fails to pay any such discharged employee, within twenty-four hours after such discharge and demand, all the wages due and payable to him, then the same penalty of five per cent. shall attach to said person, copartnership, or corporation, and become due such employee as provided in the preceding section, provided, however, that if the employer shall, within the period herein specified, tender in money to such discharged employee, the full amount of the wages lawfully due such employee, the penalty herein provided shall not attach.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921.

3087. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of section 3085 of this code, which have accrued to him, at any time within six months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R. C. M. 1921.

3088. Contracts in violations of act void. Any contract or agreement made between any person, copartnership, or corporation and any parties in his, its, or their employ, whose provision shall be in violation, evasion, or circumvention of this act, shall be unlawful and void; but such employee may sue to recover his wages earned, together with such five per cent. penalty, or separately to recover the penalty, if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R. C. M. 1921.

3089. Judgment for wages shall include attorney's fee. Whenever it shall become necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due, as provided for by this act, then such judgment shall include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

History: En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R. C. M. 1921.

Operation and Effect

In an action to recover wages due, the

plaintiff is entitled to a reasonable attorney's fee as a part of the costs without being required to either plead or prove such item. *Gardiner v. Eclipse Grocery Co.*, 72 M 540, 550, 234 P 490.

3090. Equal pay for women for equivalent service. It shall be unlawful for any person, firm, state, county, municipal, or school district, public or private corporation, to employ any woman or women in any occupation or calling within the state of Montana for salaries, wages, or compensation which are less than that paid to men for equivalent service or for the same amount or class of work, or labor in the same industry, school, establishment, office, or place of any kind or description.

History: En. Sec. 1, Ch. 147, L. 1919; re-en. Sec. 3090, R. C. M. 1921.

References

Farrell v. Yellowstone County, 68 M 313, 316, 218 P 559.

3091. Violation of preceding section a misdemeanor—penalty. Any person, firm, state, county, municipal, or school district officers, or public or private corporation, violating any of the provisions of section 3090 of this code, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense.

History: En. Sec. 2, Ch. 147, L. 1919; re-en. Sec. 3091, R. C. M. 1921.

References

Farrell v. Yellowstone County, 68 M 313, 316, 218 P 559.

3092. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents, or attempts to prevent, by word or writing of any kind, such discharged employee, from obtaining employment with any other person, such person is punishable as provided in section 11219 of the penal code, and is liable in punitive damages to such discharged person, to be recovered by civil action; no

person is prohibited from informing, by word or writing, any person to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.

History: Ap. p. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R. C. M. 1921.

3093. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist, or any person does blacklist, any discharged employee, or attempts by word or writing, or any other means whatever, to prevent any discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with another person, except as provided for in the next preceding section, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in civil action; and is also punishable as provided in section 11219 of the penal code.

History: Ap. p. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R. C. M. 1921.

3094. Employee to be furnished reason for discharge. It is the duty of any person, after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge, and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person, or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this chapter.

History: Ap. p. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R. C. M. 1921.

CHAPTER 265

PROHIBITION AGAINST CHILD LABOR

- Section 3095. Employment of children under sixteen years in certain occupations prohibited.
3096. Liability of parent.
3097. Record of children under the age of sixteen years.
3098. Age certificates.
3099. Enforcement of act.
3100. Penalties.
3101. Prohibiting employment of children in mines.
3102. Employment of a child in a mine—penalty.
3103. Parent permitting employment guilty of misdemeanor.
3104. Penalties.

3095. Employment of children under sixteen years in certain occupations prohibited. Any person, company, firm, association, or corporation engaged in business in this state, or any agent, officer, foreman, or other employee having control or management of employees, or having the power to hire or discharge employees, who shall knowingly employ or permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed-air railroad, or passenger or freight elevator, or

where any machinery is operated, or for any telegraph, telephone, or messenger company, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may be in any way detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R. C. M. 1921.

Construction

Construing this section, which prohibits the employment of children under the age of sixteen years in certain specified occupations, closing with the words "or in any occupation not herein enumerated which is known to be dangerous," held, that by the latter clause a separate class of occupations is designated, independent of and in addition to those theretofore specifically named, and that such occupations may not, under the ejusdem generis rule, be held to mean occupations of the same kind and character as those previously enumerated. *Burk v. Montana Power Co.*, 79 M 52, 63 et seq., 255 P 337.

Invalidity of Act as to Dangerous Occupations Not Specifically Enumerated

Held, that where the legislature undertakes to define a new offense the statute must be so explicit that all persons subject to its penalty may know what acts to avoid, and that under that rule the provision of this section making it a misdemeanor to employ a child under the age of sixteen years "in any occupation * * * known to be dangerous," is so uncertain as to the kind and nature of occupations intended to come within the prohibited class, as to render it void. *Burk v. Montana Power Co.*, 79 M 52, 63 et seq., 255 P 337.

Id. Courts cannot take judicial notice of the fact that a given employment not enumerated in this section, is an occupation known to be dangerous within the meaning of the child labor law.

Id. In an action for personal injuries sustained by a minor under the age of sixteen years while employed in driving a team in logging operations, who, though compensated for the injuries under the workmen's compensation act, based his action on the common-law liability of his employer on the theory that his employment was unlawful under the child labor law and therefore he was not bound by the compensation act, held, in view of the holding above that the section of the child labor law so far as it appertains to occupations not specifically named is void, that plaintiff's contention as to the illegality of his employment cannot be sustained.

Id. Laws which create crime must be so explicit that all persons subject to their penalties may know what acts to avoid.

Knowledge

Since a corporation defendant in an action based on a violation of the child labor law can only have vicarious knowledge of any fact, the knowledge of its managing officers that a minor of the prohibited age was being employed in a proscribed labor constitutes the knowledge required by the act. *Daly v. Swift & Co.*, 90 M 52, 61, 300 P 265.

Id. The fact that a boy under the forbidden age of sixteen years was employed by an independent contractor in making repairs on a freight elevator when injured was immaterial, it having been defendant company's duty, being in full possession of the building and elevator and with knowledge that he was engaged in forbidden labor, to see to it that he was not permitted to continue therein.

Negligence Per Se

Violation of the child labor law, though merely penal, forms the basis of an action for damages for injuries to the minor, and the general rule that violation of a statute enacted for the protection of the public is negligence per se applies. *Daly v. Swift & Co.*, 90 M 52, 61, 300 P 265.

Penal in Character

This section, making the act of employing a child under the age of sixteen years in certain occupations a misdemeanor and prescribing punishment for a violation thereof, is penal, and not remedial, in character. *Burk v. Montana Power Co.*, 79 M 52, 63 et seq., 255 P 337.

Requisites of Complaint for Damages

Complaint in an action to recover damages for the death of a boy under the age of twelve years alleging, inter alia, that defendant company knowingly and negligently permitted the boy to be employed by an independent contractor in and about heavy elevator machinery while being moved, contrary to the provisions of the child labor law, (this section), held not open to the objection that it did not state a cause of action in that it showed on its face that deceased was not in the employ of defendant but that of the contractor. *Daly v. Swift & Co.*, 90 M 52, 61, 300 P 265.

Id. The proximate cause of an injury to a minor protected by the child labor law was the fact that he was permitted to work in a forbidden place and not the negligence of the contractor in operating the freight elevator contrary to instructions given him by defendant, which neg-

ligence but concurred with that of defendant and could not relieve the latter from liability.

The complaint in an action by a minor against a railway company to recover damages for personal injuries under this section, making it negligence per se for an employer to hire a child under sixteen years of age, must allege that defendant employed plaintiff knowing him to have been under that age. *Fallon v. Chicago etc. Ry. Co.*, 61 M 130, 132, 200 P 453.

What Defenses Not Available

In an action such as this the defenses of contributory negligence and assumption of risk are not available. *Daly v. Swift & Co.*, 90 M 52, 61, 300 P 265.

References

Cited or applied as section 1746, revised codes, in *Flaherty v. Butte Electric Ry. Co.*, 42 M 89, 95, 111 P 348.

3096. Liability of parent. Any parent, guardian, or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state, or who shall permit or allow any such child over whom he has such care, custody, or control to retain such employment as is prohibited in the preceding section whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R. C. M. 1921.

References

Daly v. Swift & Co., 90 M 52, 63, 300 P 265.

3097. Record of children under the age of sixteen years. The commissioner of labor and industry shall compile and preserve in his office from reports made to him by the county superintendent of schools, as otherwise provided, a full and complete list of the name, age, date of birth, and sex of each child, and the names of the parents or guardians of each child under the age of sixteen years who is now or may hereafter become a resident of this state, and such list shall be the official record of the age of children in this state.

History: En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R. C. M. 1921.

NOTE.—The commissioner of labor and industry mentioned in this and the two

succeeding sections was abolished by chapter 216, laws of 1921. See, however, section 3635, which makes it the duty of the department of agriculture, labor and industry to enforce all the laws of Montana relating to child labor.

3098. Age certificates. Upon obtaining the age of sixteen years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom such child may seek employment. The employer, if such employment be given, must countersign the certificate and return the same to the commissioner of said bureau, who shall keep the same on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by section 3095, any child without such certificate showing the child to be at least sixteen years of age, shall be guilty of a misdemeanor and punishable as herein-after provided, should such child prove to be less than sixteen years of age.

History: En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R. C. M. 1921.

References

Burk v. Montana Power Co., 79 M 52, 63, 255 P 337.

3099. Enforcement of act. To enforce this act the commissioner of labor and industry, the bureau of child and animal protection, and all county attorneys shall, each upon their own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations.

History: En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R. C. M. 1921.

3100. Penalties. Every person, firm, company, association, or corporation who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R. C. M. 1921.

3101. Prohibiting employment of children in mines. Any person, corporation, stock company, or association of persons, owning or operating any underground mine, or any officer, agent, foreman, or boss, having the control or management of employees, or having the power to hire or discharge employees, who shall employ, or knowingly permit to be employed, any child under the age of sixteen years, for work or service in any such mine, or the underground workings thereof, or permit or allow any such child to render or perform any work or service whatever in such mine, whether under contract of employment or otherwise, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 16, L. 1905; re-en. Sec. 1752, Rev. C. 1907; re-en. Sec. 3101, R. C. M. 1921.

3102. Employment of a child in a mine—penalty. Every person who receives or employs any child under fourteen years of age in any underground works or mine, or in any similar business, is punishable by a fine not exceeding one thousand dollars.

History: En. Sec. 15, 5th Div. Comp. Stat. 1887; amd. Sec. 474, Pen. C. 1895; re-en. Sec. 8349, Rev. C. 1907; re-en. Sec. 3102, R. C. M. 1921.

3103. Parent permitting employment guilty of misdemeanor. Any parent, guardian, or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow such child to work in any mine having underground workings, or who shall permit or allow any such child over whom they may have such care, custody, or control to retain employment in any such mine, or who, after having knowledge that any such child has taken employment in any such mine, or is performing work or service therein, whether under contract of employment or not, shall fail forthwith to notify the person or corporation owning or operating such mine, or some officer, foreman, or employee thereof having the power to hire or discharge employees, of the age of such child, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 16, L. 1905; re-en. Sec. 1753, Rev. C. 1907; re-en. Sec. 3103, R. C. M. 1921.

3104. Penalties. Any person or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 16, L. 1905; re-en. Sec. 1754, Rev. C. 1907; re-en. Sec. 3104, R. C. M. 1921.

3105-3115. Repealed—Chapter 48, laws of 1935.

CHAPTER 266

DENTISTRY—REGULATION OF PRACTICE

- Section 3115.1. State board of dental examiners—governor to appoint—vacancies—candidates to be submitted by dental association—qualifications.
- 3115.2. Oath of office—removal.
- 3115.3. Official seal—board officers—power to administer oaths and hear testimony.
- 3115.4. Meetings—notice—quorum—funds—bond required of secretary-treasurer—duties—accounts.
- 3115.5. Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examination—notice—scope of examination—dentist certificate—fee—form—retention and inspection of examination papers.
- 3115.6. Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—reduction allowed, when—inactive fee—due date of annual fee—revocation of license for failure to pay.
- 3115.7. County clerk's register of dentists—contents—fee for registration.
- 3115.8. Failure to register certificate as prima facie proof of lack of authority to practice dentistry.
- 3115.9. Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation—disposal and investment of moneys received.
- 3115.10. Practice of dentistry defined—persons conducting business through licensed dentist—exceptions.
- 3115.11. Duty of county attorney to enforce act—attorney general's duty on appeal—jurisdiction of justice courts.
- 3115.12. Designations constituting prima facie evidence of practicing dentistry.
- 3115.13. Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension.
- 3115.14. Judicial review on revocation or suspension of license—procedure—appeals.
- 3115.15. Witness fees and mileage.
- 3115.16. Power of district court on hearing—board may procure court order to compel attendance of witnesses—contempt.
- 3115.17. Publishing professional cards not unprofessional conduct.
- 3115.18. Misdemeanors, acts constituting.
- 3115.19. Practicing dentistry without certificate, penalty for—disposition of fines.
- 3115.20. Affiliation with national association authorized—delegate—expenses allowed.
- 3115.21. Dental hygienists—qualifications—examination—fee—registration—certificate form—re-examination—powers and limitations—revocation of license.
- 3115.22. Annual license fee for dental hygienists—revocation of license for failure to pay.
- 3115.23. Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists.
- 3115.24. Recognition of dental schools.
- 3115.25. Citation of act—regulatory board.

3115.1. State board of dental examiners—governor to appoint—vacancies—candidates to be submitted by dental association—qualifications.

There is hereby created a state board of dental examiners of the state of Montana which board shall consist of five (5) members, and shall be composed of the present member personnel of the board of dental examiners superseded by this act, until the time when their respective terms of office would expire, except for this act and upon the expiration of such respective periods of time for which any member of said board would serve, the governor shall appoint his successor who shall hold office for five (5) years and until his successor shall be appointed and qualify; and thereafter as often as the term of any member of said board shall expire, the governor shall appoint his successor as herein provided for said term of five (5) years.

Any vacancy upon the board caused by the resignation, death or removal of a member shall be filled by the governor by appointment for the unexpired term of that member.

The Montana state dental association shall, through its secretary, present to the governor within fifteen (15) days after its regular annual meeting, a list of the names of not less than five candidates from which appointments for vacancies on the board occurring during the ensuing year may be made, provided that at all times at least three (3) members of the board shall be appointed by the governor from the list of candidates so submitted by the said association. No person shall be eligible to membership on said board of dental examiners who has not been legally qualified to practice, and who has not been engaged in the active practice of dentistry in the state of Montana for at least five (5) continuous years immediately prior thereto, and who does not at the time of his appointment hold a certificate entitling him to practice dentistry in the state of Montana, and who is not a citizen of the United States and a resident of the state of Montana.

History: En. Sec. 1, Ch. 48, L. 1935.

3115.2. Oath of office—removal. Each member of said board hereafter appointed shall before entering upon the duties of his office, take and subscribe an oath or affirmation substantially to the effect that such member will support the constitution and laws of the United States and the state of Montana, and that such member will faithfully perform the duties of a member of the state board of dental examiners of the state of Montana. The governor may remove any member for neglect or cause, after due notice and full hearing before the governor.

History: En. Sec. 2, Ch. 48, L. 1935.

3115.3. Official seal—board officers—power to administer oaths and hear testimony. Said board shall have an official seal of its own design, and shall employ the same to authenticate its acts and records as may be required; and shall, at its annual meeting, choose from its members a president, vice president and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935.

3115.4. Meetings—notice—quorum—funds—bond required of secretary-treasurer—duties—accounts. The board shall meet at least once in each year or oftener at any point in the state of Montana at the call of the president and the secretary-treasurer. Five days' notice must be given by the secretary-treasurer to all board members of the time and place of the meeting of said board. The regular annual meeting of the board shall be held on the second Monday in July of each year. Three members of said board shall constitute a quorum for the transaction of business and its proceedings shall be open to public inspection in all cases of public interest. All moneys received by the board and/or its officers for the board, shall be paid to the secretary-treasurer of the board, who shall be the custodian of the board's receipts and funds, and all disbursements shall be made by him in accordance with this act, and the directors of the board.

The secretary-treasurer shall give bond in such amount as the board may from time to time require, which bond shall be approved by the board, and he shall keep a complete record of all meetings and proceedings of which records the secretary-treasurer shall be custodian, and he shall keep a true and complete account of all moneys received and disbursements made by the board and by him as such officer. The secretary-treasurer shall, not later than the fifteenth day of January of each year, cause to be prepared, a full, true and accurate account of all moneys received, and of all expenditures made, including per diem and expenses of each board member, during the last preceding calendar year, which shall be verified and certified by a certified public accountant employed by the board. A copy of such account shall be delivered to the governor of Montana and like copies shall be mailed to every registered dentist in the state of Montana.

History: En. Sec. 4, Ch. 48, L. 1935.

3115.5. Dentistry examinations—application—contents — fees — undergraduate examination—regulations for examination—notice—scope of examination—dentist certificate—fee—form—retention and inspection of examination papers. Any person desiring to commence the practice of dentistry in the state of Montana after this act takes effect, shall file in his or her full name, an application for examination, with the secretary-treasurer of the state board of dental examiners at least twenty (20) days before the date set by the board for the commencement of such examinations, and at the time of making such application the applicant shall (a) pay to the secretary-treasurer of the board a fee of twenty-five dollars (b) shall furnish the board with at least three (3) satisfactory affidavits of good moral character, (c) shall present to said board his or her diploma or satisfactory evidence of having graduated from a recognized dental school or college, which must have been approved by said board, and (d) shall furnish the board a recent photograph of the applicant.

The board may, in its discretion, permit any dental student who shall have successfully completed his or her junior year in a recognized dental school, and who files proof satisfactory to the board that he or she has the preliminary education in this section described, to take written examination in such subjects as he or she has completed, and all satisfactory grades

there secured shall be credited upon the final examination of such student. The board shall require a fee of twenty-five dollars for such examination which fee shall apply on the final examination to be taken by such applicant.

The board shall adopt a uniform code of rules and regulations within the limitations of this act, governing the matter of examinations for license to practice dentistry in the state of Montana, which examinations shall be open to any applicant meeting the requirements of this act, and shall also provide in such code for giving reasonable notice of the time and place where examinations shall be held. The examination hereinabove referred to shall be practical in character, and sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on any or all of the following subjects: Anatomy, histology, physiology, chemistry, materia medica and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, and orthodontia, and any additional subjects pertaining to dental science. Said written examination may be supplemented by oral examinations. Demonstrations of the applicant's skill in operative and prosthetic dentistry shall also be required. Said examination shall be conducted under oath or affirmation before said board, and any member of said board is empowered to administer the necessary oath or affirmation. All persons successfully passing such examination shall be registered as licensed dentists in the board register, as hereinabove provided, and, upon payment of an additional twenty-five dollars shall receive a certificate signed by the president and secretary of said board, in substantially the following form, to-wit:

“This is to certify that is hereby licensed to practice dentistry in the state of Montana. This certificate must be filed for registration in the office of the county clerk of any county in which the dentist holding such certificate desires to practice, and it is unlawful for him or her to practice dentistry in any county in which said certificate is not filed for registration.

Dated at....., this..... day of....., 19.....”

Examination papers of any applicant shall be retained two (2) years by the secretary-treasurer of the board and may then be destroyed, and while so retained shall be open to inspection only by board members, the applicant himself, or by some person appointed by such applicant to examine same, or by a court of competent jurisdiction in a proceeding where the question of the contents of such paper or papers is properly involved.

History: En. Sec. 5, Ch. 48, L. 1935.

3115.6. Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—reduction allowed, when—inactive fee—due date of annual fee—revocation of license for failure to pay. The certificate in this act provided for shall entitle the holder thereof to practice dentistry in any county in the state of Montana, pro-

vided such certificate shall first be filed for registration and registered in the office of the county recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first registered in the office of the recorder of such county as herein provided; provided further that any such holder of a certificate may practice in more than one or in any number of counties in this state on having such certificate registered in each of such counties in which such holder desires to practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any such certificate issued under the provisions of this act, issue a duplicate certificate in place thereof, and a fee of one dollar shall be charged for issuing such certificate. Any person failing to pass his first examination before such board, may demand a second examination at any subsequent meeting of said board held for the purpose of examining candidates, and no fee shall be charged for any subsequent examination.

Any dentist who has been (1) lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, and (2) who is a graduate of an accredited four year high school or has actual scholastic credits equivalent to a four year high school course and (3) who is a graduate of a recognized dental school or college, and (4) who has been lawfully and continuously engaged in the practice of dentistry for five years or more immediately before filing his application to practice in this state and (5) who shall deposit in person with the secretary-treasurer of the board a duly attested certificate from the examining board of the state or territory in which he is registered and/or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, (6) upon the payment of a fee of fifty dollars (\$50.00) and (7) after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory. Provided, however, that no license shall be issued without an examination in theory to any such applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of dentistry within its own borders to dentists heretofore and hereafter licensed by this state, and removing to such other state; and provided, further, that the state board of dental examiners of the state of Montana shall have power to enter into reciprocal relations with similar boards of other states whose laws are practically identical with the provisions of this act.

In addition to the license fee required of applicants, every licensed dentist practicing within the state of Montana shall pay in each and every year to the secretary-treasurer of the board, the sum of four (\$4.00) dollars, as a license fee for such year, provided, however, that the board shall have the power to reduce the annual license fee of four dollars to the sum of one (\$1.00) dollar or more (but not in excess of four (\$4.00) dollars) per

year when the amount of the balance of cash in the hands of the secretary-treasurer reaches the sum of four thousand dollars, it being the intent of this act that said fund shall be maintained at an approximate level of four thousand dollars. Notice of such change in the amount of dues shall be given to each dentist registered in the state, by the secretary-treasurer.

In the event any registered dentist absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of one dollar each year, or, at the discretion of the board, he may be reinstated upon the payment of a fee of one dollar (\$1.00) for each year's absence. Such annual payments shall be made prior to May first in each and every year, and receipt or certificate therefor shall be issued by the secretary-treasurer of the board. In case of default in payment of annual license fee by any dentist, his license shall be revoked by the board upon thirty days' notice given to the delinquent of the time and place of considering such revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as such address appears upon the records of the board, shall constitute sufficient notice of revocation of license, but no license shall be revoked for such non-payment if the dentist so notified shall pay such license fee before or at the time fixed for consideration of revocation together with a delinquency penalty of five dollars; provided further that said board may collect any such dues by law.

History: En. Sec. 6, Ch. 48, L. 1935.

3115.7. County clerk's register of dentists—contents—fee for registration. The county clerk of each county in the state of Montana is required to register in a special book to be kept by him for that purpose, to be known as the register of dentists, all certificates issued under the provisions of this act which may be presented to him for that purpose. Such registration shall show the name and place of residence of the certificate holder, the date of the issuance of such certificate, and the date of the registration thereof. After the registration of any such certificate, such county recorder shall return the same with the certificate of its registration, to the party entitled thereto. Such county clerk shall receive for such filing and registration a fee of one (\$1.00) dollar, which shall be paid by the holder thereof.

History: En. Sec. 7, Ch. 48, L. 1935.

3115.8. Failure to register certificate as prima facie proof of lack of authority to practice dentistry. In any prosecution for misdemeanor under the provisions of this act the certificate of the county recorder of the county within which such misdemeanor is alleged to have been committed to the effect that there has been no certificate of the board of dental examiners of the state of Montana, filed and registered in such county recorder's office, issued under the provisions of this act, to the person accused of such misdemeanor, shall be sufficient prima facie proof that such person is not entitled to practice dentistry in such county.

History: En. Sec. 8, Ch. 48, L. 1935.

3115.9. Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation—disposal and investment of moneys received. Out of the funds coming into the possession of the board from the fees and dues charged as hereinabove provided, the sum of fifteen (\$15.00) dollars per day for each day actually engaged in the duties of his office and the amount of the actual railroad and Pullman fares to and from his place of residence to the place where the meetings of said board are held, shall be paid to each member of said board attending such meetings. Meetings held for the purpose of examining candidates for license to practice dentistry in Montana shall in no case exceed six days. Said board may, if by it deemed advisable, with the consent of the county attorney of any county, employ and compensate out of said fund, special counsel to assist in the prosecution in the courts of such county and in the supreme court of this state, of any offense alleged to have been committed under the provisions of this act in such county. Such expenses shall be paid from the fees received by the board under the provisions of this act. The secretary-treasurer of the board shall receive such reasonable compensation for his services as said board may fix. All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of said board as a special fund for meeting the expenses of said board, the proper administration of this act and for such educational purposes as may be deemed wise by said board. All moneys on hand shall be invested or deposited under the direction of the board, and all moneys received by the board under this act shall be and remain subject to its exclusive custody and control.

History: En. Sec. 9, Ch. 48, L. 1935.

3115.10. Practice of dentistry defined—persons conducting business through licensed dentist—exceptions. Any person shall be considered to be practicing dentistry within the meaning of this act who shall own, manage or carry on a dental practice or business or who shall, for salary, fee, money, or other compensation paid either to himself or to any other person directly or indirectly, perform, or cause to be performed by any other person, agent, or employe, any operation upon or treatment of the human teeth, or tooth, jaw or jaws or any disease or lesion of the human teeth, or tooth, jaw or jaws, or the malposition thereof, or do any drilling or filling, or who attempts to perform any operation incident to the replacement of teeth or removing tartar from, cleaning or extracting human teeth or tooth of any person, or who shall administer an anaesthetic of any nature, or who shall prescribe any drug or medicine, in the practice of the profession of dentistry or in the business of dentistry; or who shall advertise by any means whatsoever, that he will himself, or by any other person, agent or employe, perform any operation or give any treatment in this paragraph specified; provided, however, that any person, who is not a regularly licensed dentist but who is, at the time this act takes effect, the owner and/or manager of a lawfully conducted dental business or practice in the state of Montana, wherein the dental work in this paragraph specified is actually performed by any other person, agent or em-

ploye who is in fact a regularly licensed dentist within this state, shall be permitted to carry on such dental business or practice so long as he shall continue to conduct such dental business or practice through the agency of dentists and dental hygienists duly licensed and practicing under this act.

Nothing in this act contained applies to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau, or to a legal practitioner of another state making a clinical demonstration before a dental society, convention or association of dentists, or to a legally qualified dental hygienist in the performance of his or her duties as provided by law.

History: En. Sec. 10, Ch. 48, L. 1935.

3115.11. Duty of county attorney to enforce act—attorney general's duty on appeal—jurisdiction of justice courts. It shall be the duty of the county attorney of each county wherein an offense is alleged to have occurred, to attend to the prosecution of all complaints made under this act, both upon trial in the justice court where the complaint may be made, and also upon hearing in the district court, either upon such complaint, or upon information or indictment filed against any person under this act in the district court; provided, nothing in this act shall be construed to prevent the prosecution of any person for violation of this act upon the information of the county attorney directly. The attorney general of the state shall appear in the supreme court and attend to the prosecution of all criminal cases arising under this act, which may be appealed to said court, or taken to said court by any appellate process or procedure for review. Justice courts shall have original concurrent jurisdiction in accordance with law of all misdemeanors committed in violation of the provisions of this act.

History: En. Sec. 11, Ch. 48, L. 1935.

3115.12. Designations constituting prima facie evidence of practicing dentistry. Whenever any person shall append the word "dentist," or the letters "D. D. S., D. M. D.," or like letters to his or her name, in any way, for advertising, or upon any door or sign, or upon or in any writing, or print or publish or use the same in any way, or cause either of the same to be done, the same shall be prima facie evidence that such person is engaged in the practice of dentistry and subject to the regulations and convictions and penalties of this act.

History: En. Sec. 12, Ch. 48, L. 1935.

3115.13. Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension. Any dentist may have his or her license revoked or suspended by the state board of dental examiners for any of the following reasons:

1. Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence.

2. For renting or loaning or attempting to rent or loan to any person his or her license for the practice of dentistry or his or her diploma of grad-

uation from a dental college, school or course to be used as a license or diploma of such person.

3. For unprofessional conduct as herein defined or for gross ignorance or inefficiency in his profession, or for habitual intemperance or gross immorality.

Unprofessional conduct shall consist of employing what are known as "cappers" or "steerers" to obtain business; the obtaining of any fee by fraud or misrepresentation; wilfully betraying professional secrets; employing, directly or indirectly, any student or any suspended or unlicensed dentist, to perform any operations in the practice of dentistry or to treat lesions of the human teeth or jaws or correct malimposed formations thereof; making use of any advertising statements of a character tending to deceive or mislead the public; advertising prices; advertising professional superiority, or performance of professional services in a superior manner; advertising by means of a large display, glaring light sign, or other sign or device containing as a part thereof the representation of a tooth, teeth, bridge work, or any portion of the human head; advertising over the radio in any manner not expressly permitted by this chapter; employing or making use of advertising solicitors or publicity press agents; advertising any free dental work or free examination; advertising to guarantee any dental service or to perform any dental operation painlessly; advertising by sign or printed advertisements under the name of a corporation, company, association or trade name, except that corporations, companies or associations existing and actually engaged in the practice of dentistry prior to the enactment of this chapter may continue operating under such name while conforming to the provisions of this act. Proceedings under this section may be taken by the board upon its initial motion, for matters within its knowledge, or may be taken upon the information of another; provided, however, that if the informant is a member of the board, the other members of said board shall constitute the board for the purpose of determining the truth of the charge or accusation. All accusations must be in writing, verified by some party familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation the board shall, if it deem the accusation sufficient, make an order setting the same for hearing, and requiring the accused to appear and answer such charge or accusation at said hearing, at a specified time and place, and the secretary shall cause a true copy of said order of the board and of the accusation or charge to be served upon the accused at least ten (10) days before the day appointed in the order for said hearing. The process issued by the board, or any member thereof, shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board or any member thereof. Proof of service shall be made as provided in civil cases in courts of record and shall be filed with the secretary of the board. The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided

herein for the fees of witnesses. The accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause, upon the accused's application or the board's order, the board assign another day for that purpose. If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confess the accusation or refuse to answer the charge, or upon the hearing thereof, the board shall find the charge or accusation (whether one or more) true, it may proceed to an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Such subpoena shall be issued over the signature of the secretary of the board and the seal thereof, and in the name of the state of Montana. Upon revocation or suspension of any license the fact shall be noted upon the records of the state board of dental examiners of the state of Montana and the license shall be marked as cancelled upon the date of its revocation, or suspended, as the case may be. The secretary of the board shall, upon order of suspension or revocation being entered, transmit to the county recorder wherein the license of the licensee affected by such judgment is registered and recorded, a copy of such order, certified to as such by said secretary of the board, for record, and the same shall be registered in the same manner and in the same book wherein is kept the registration of the certificate to practice dentistry.

History: En. Sec. 13, Ch. 48, L. 1935.

3115.14. Judicial review on revocation or suspension of license—procedure—appeals. In case of the revocation or suspension of a license by the said board the licentiate whose license shall have been revoked by the said board shall have the right to judicial review of said revocation or suspension by commencing proper proceedings therefor within 30 days of the filing of the order of cancellation or revocation of said license, including trial de novo. Such review shall be in the district court in and for the county in which was held the meeting of the board in which such order of revocation or suspension was made. In case a person desires to secure such review, with or without trial de novo, he shall within said thirty (30) days serve, or cause to be served, upon the secretary of said board, a written notice of appeal for review which shall contain a statement of the grounds of such appeal, and such person shall also file in the office of the secretary of the board an appeal bond, in an amount not to exceed three hundred (\$300.00) dollars, with good and sufficient surety to be approved by said secretary, running to the state of Montana for the benefit of the board, conditioned for the speedy prosecution of such appeal and the payment of such costs as may be charged against the party appealing upon such appeal. Said secretary, within ten days after the service of said notice of appeal, and the filing and approval of said bond, shall (at the expense of the appellant where the evidence is sought to be reviewed).

transmit to the clerk of the district court to which said appeal is taken, a certified copy under the seal of said board, the entire record and proceedings before the board including all testimony and evidence taken by said board, together with the bond on appeal. The clerk of such court shall thereupon docket such appeal and the same shall be tried in all respects as ordinary civil actions and like proceedings shall be had as therein. Upon said appeal said cause at the request of appellant or the board, shall be tried de novo, with the right to offer additional evidence by any party. Either party may appeal from the judgment of the district court to the supreme court in the same manner as civil actions may be appealed thereto. The order of the board shall be stayed from the date of the approval of said bond on appeal until final determination of said appeal.

History: En. Sec. 14, Ch. 48, L. 1935.

3115.15. Witness fees and mileage. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935.

3115.16. Power of district court on hearing—board may procure court order to compel attendance of witnesses—contempt. The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and

ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten days from the date of the order, and then and there show cause why he has not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

History: En. Sec. 16, Ch. 48, L. 1935.

3115.17. Publishing professional cards not unprofessional conduct. It shall not be considered unprofessional for a dentist to place in any newspaper or publication, a card bearing his name only, together with his or her degree, or the word "dentist," and giving office location, hours and telephone numbers and if he limits his practice to a specialty he may so announce it, or he may announce his absence from, or his return to, practice in the same manner. Such card or announcement shall not be more than one column in width, nor more than three inches in depth.

History: En. Sec. 17, Ch. 48, L. 1935.

3115.18. Misdemeanors, acts constituting. Any person, company or association shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable with a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00), or by imprisonment for not more than six (6) months in the county jail or by both such fine and imprisonment, who:

1. Shall sell or barter, or offer to sell or barter, any diploma or document, conferring or purporting to confer any dental degree, or any certificate or transcript, made or purporting to be made, pursuant to the laws regulating the license and regulation of dentists; or

2. Shall purchase or procure by barter, any such diploma, certificate or transcript, with intent that the same shall be used as evidence of the holder's qualification to practice dentistry, or in fraud of the laws regulating such practice; or

3. Shall, with fraudulent intent, alter in a material regard any such diploma, certificate or transcript; or

4. Shall use or attempt to use any such diploma, certificate or transcript which has been purchased, fraudulently issued, counterfeited or materially altered, either as a license or color of license to practice dentistry, or in order to procure registration as a dentist; or

5. Shall practice dentistry under a false or assumed name; or

6. Shall in an affidavit, required of an applicant for examination, license or registration, under this act, wilfully make a false statement in a material regard; or

7. Shall engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office, the required annual registration certificate for the current year; or

8. Shall, within ten days after demand made by the secretary of the board, fail to furnish to said board the name and address of all persons practicing or assisting in the practice of dentistry in the office of said person, company or association, at any time within 60 days prior to said notice, together with a sworn statement showing under and by what license or authority said person, company or association and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against said person, company or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935.

3115.19. Practicing dentistry without certificate, penalty for—disposition of fines. Any person who, as principal, agent, employer, employee or assistant, shall practice dentistry in any manner whatever, or who for reward or hire shall do any act of dentistry, without having first secured his or her certificate to practice dentistry from the state board of dental examiners of the state of Montana entitling him or her to so practice in this state, shall be guilty of a misdemeanor, and upon conviction in a district court shall be fined in any sum not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000.00) dollars or be confined for any period not exceeding six months in the county jail, for each and every offense. All fines imposed and collected under this act shall be paid into the treasury of the county in which such suits, actions or proceedings shall have been commenced. All moneys thus paid into the treasury over and above the amount necessary to reimburse the county for any expense incurred by said county, in any suit, action or proceeding brought under the provisions of this act, shall be paid, before the first day of January of each year, to the secretary-treasurer of the state board of dental examiners of the state of Montana, and become and be a part of the fund to be used by the said state board of dental examiners in the enforcement of the provisions of this act, and shall be used for no other purpose.

History: En. Sec. 19, Ch. 48, L. 1935.

3115.20. Affiliation with national association authorized—delegate—expenses allowed. The said board of dental examiners may affiliate with the national association of dental examiners as an active member, and may pay regular annual dues to said association, and may send a delegate to the meetings of such association, which delegate shall receive as compensation his actual railroad and Pullman fare, or an amount equal to railroad and Pullman fare, to and from the place of meeting of the national dental association, plus an allowance of ten (\$10.00) dollars for each day of actual attendance at such meeting and for each day spent in traveling to and from the place of such meeting.

History: En. Sec. 20, Ch. 48, L. 1935.

3115.21. Dental hygienists — qualifications — examination—fee—registration—certificate form—re-examination—powers and limitations—revocation of license. Said board may also issue licenses to dental assistants to be known as dental hygienists. Every candidate for examination as dental hygienist shall pay the secretary-treasurer of the board a fee of ten dollars, and shall furnish satisfactory proof that he or she is a graduate of an accredited high school in this state maintaining a complete four (4) year course or a school of like and equal standing in any other state or country, or has actually earned units of study equivalent to those necessary for graduation from such school and who has earned a diploma or certificate from a recognized school of dental hygienists offering a course of study with such equipment and facilities as shall be approved by the board, which shall ascertain and determine what shall constitute a recognized school within the meaning of this act. Every applicant who shall successfully pass such examination as may be prescribed by the board shall be granted a license as a dental hygienist, and shall be registered as such in a record kept by the secretary of the state dental board, and shall receive a certificate, signed by the president and secretary-treasurer of the board, in substantially the following form, to-wit:

“This is to certify that.....is hereby licensed as a dental hygienist in the state of Montana. This certificate must be filed for registration in the office of the county clerk of any county in which the holder of this certificate desires to practice, and it shall be unlawful for him or her to practice in any county in which said certificate is not filed for registration.

Dated at....., this day of 19.....”

Any applicant for license as dental hygienist failing to pass his or her first examination may take a subsequent examination at any regular meeting of the board without further cost. Such licensed dental hygienist may remove calcareous deposits, accretion and stains from the exposed surfaces of teeth and from directly beneath the normal free margin of the gums and may prescribe or apply ordinary mouth washes of soothing character, but shall not perform any other operation on the teeth, mouth, or tissues of the oral cavity. Such licensed dental hygienist may operate in the office of a legally licensed dentist or in any state or municipal institution or in public schools, or under a board of health or in any public clinic authorized by said board, but shall not operate in any case except under the direct supervision of a licensed dentist. The board may revoke or suspend the license of any dental hygienist for violating any provision hereof, and may revoke or suspend the license of any registered dentist who shall permit any dental hygienist operating under his supervision to perform any operation other than those permitted under the provisions of this section.

History: En. Sec. 21, Ch. 48, L. 1935.

3115.22. Annual license fee for dental hygienists—revocation of license for failure to pay. Before the first day of May in each year every licensed dental hygienist shall pay to the board of dental examiners a license fee of

\$1.00, and in default of such payment, the board may after hearing and upon thirty (30) days' notice revoke the license of the hygienist in default; but the payment of such fee on or before the time of hearing, with such additional sum as shall be fixed by the board, not exceeding one dollar, shall excuse the default. The board may collect such fee by suit.

History: En. Sec. 22, Ch. 48, L. 1935.

3115.23. Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists. Any dental hygienist duly licensed to practice as such in another state having and maintaining an equal standard of laws regulating the practice of dental hygienists within this state and who is a graduate of an accredited high school maintaining a complete four (4) year course and who is also a graduate of a recognized school of dental hygiene, and who is of good moral character and is desirous of removing to this state, and deposits in person with the board of dental examiners a certificate from the examining board of the state in which he or she is licensed, certifying to the fact of his or her being licensed and that he or she is of good moral character and professional attainments, may, upon the payment of a fee of ten dollars (\$10.00), at the discretion of the board, be granted a license to practice in this state without further examination. As to any person so applying and who has been licensed in a state not maintaining a standard of laws equal to those in force within this state, the board may license such persons upon the payment of the fee provided for above, furnishing the same evidence as to licensing, good moral character, and professional attainments, and passing such further examinations as the board of dental examiners shall deem necessary.

It shall be unlawful for any person, who is not at the time of the passage of this act, employed as a dental hygienist in the office of a regularly licensed dentist in this state, to commence such practice unless such person shall have obtained a certificate, as herein provided.

Any dental assistant who can produce satisfactory evidence that such person has been employed as a dental hygienist in the office of a regularly licensed dentist in the state of Montana for one or more years prior to the passage of this act, may, upon payment of a fee of ten (\$10.00) dollars, be granted a certificate to practice by the state dental board. Such certificate must be secured before such person may continue practice as a hygienist.

History: En. Sec. 23, Ch. 48, L. 1935.

3115.24. Recognition of dental schools. In determining what shall constitute a recognized dental college or school and/or a recognized school of dental hygiene, the board shall be guided by the standards, canons and practices required for such recognition by the national association of dental faculties.

History: En. Sec. 24, Ch. 48, L. 1935.

3115.25. Citation of act—regulatory board. This act may be known and cited as the "Montana dentistry regulation act" and said state board

of dental examiners of the state of Montana is hereby declared to be a regulatory board within the meaning of the proviso of section 192.

History: En. Sec. 27, Ch. 48, L. 1935.

CHAPTER 267

MEDICINE—REGULATION OF PRACTICE

- Section 3116. Qualifications, appointment, and term of medical examiners.
 3117. Organization of board—register.
 3118. Examination of applicants.
 3119. Examination of applicants for certificates—revocation of certificates—appeals from decision of board.
 3120. Certificate must be recorded.
 3121. Exceptions.
 3122. Practicing medicine without certificate—penalties.
 3123. Fees for examination and admission.
 3124. Compensation of board members.

3116. Qualifications, appointment, and term of medical examiners.

The governor, with the advice and consent of the senate, shall appoint seven learned, skilled, and capable physicians, who shall have been residents of the state of Montana for not less than two years preceding their appointment, not more than two of whom shall be from the same county, and who have attended three courses of lectures, and are graduates of accredited colleges of medicine, who shall constitute the board of examiners for the purposes of this article. The physicians so appointed shall hold their respective offices for seven years; provided, that the terms in office of those constituting the present board shall not be affected by the provisions of this act; and the terms of their successors shall be so arranged as to succeed the present incumbents as their terms expire; and provided, also, that all the vacancies occurring shall be likewise filled by appointment by the governor, with the advise and consent of the senate. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session.

History: The first board of medical examiners was created by sections 1 to 9, pp. 175 to 178, laws 1889. This act was amended by sections 600 to 608, political code 1895. The law is here given as it appears with amendments subsequent to 1895.

This section en. Sec. 600, Pol. C. 1895; re-en. Sec. 1585, Rev. C. 1907; re-en. Sec. 3116, R. C. M. 1921.

Constitutionality

The act regulating the practice of medicine is not unconstitutional as denying the equal protection of the laws, in that it discriminates in favor of osteopathic practitioners. *State v. Dodd*, 51 M 100, 149 P 481.

The practice of medicine is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059.

Sufficiency of Proof of Violation

In a prosecution for engaging in the practice of osteopathy without first having a license, an allegation that the defendant engaged in the practice "without first having obtained a certificate or license from the state board," etc., is material, and must be established by the state beyond a reasonable doubt; but the evidence as to that matter is sufficient where the record of the secretary of such board discloses that the defendant had never applied to the board for a license or certificate, and there is no evidence to contradict it. *State v. Hopkins*, 54 M 52, 64, 166 P 304.

References

Cited or applied as section 600, political code, in *State ex rel. State Board of Medical Examiners v. District Court*, 26 M 121, 122, 66 P 754.

3117. Organization of board—register. The board of medical examiners must, on the first Tuesday of April of each year, elect from among

their number a president, secretary, and treasurer, and must have a seal. Four members of said board shall constitute a quorum. The president and secretary have the power to administer oaths in examination of applicants for certificates, and witnesses called before the board in the transaction of business under the provisions of this act. The board of examiners must hold meetings for examinations at the seat of government on the first Tuesdays of April and October of each year, and at such other times and at the same and other places as the board may determine. The board must keep a record of all proceedings thereof, and also a register of all applicants for a certificate, with the age of the applicant, time spent in the study of medicine, and the name and location of all the institutions granting to such applicant degrees or certificates of lectures attended in medicine or surgery. The register must also show whether such applicant was rejected, or has received a certificate under this act; such register is prima facie evidence of all the matters therein kept.

History: En. Sec. 601, Pol. C. 1895; re-en. Sec. 1586, Rev. C. 1907; re-en. Sec. 3117, R. C. M. 1921.

Sufficiency of Proof of Violation

Where, in a prosecution for engaging in the practice of osteopathy without having first procured a license, it is material to allege that the defendant was not a duly licensed practitioner of medicine or surgery, there is sufficient evidence that he was not such a practitioner where his name does not appear upon the register of applicants to the board of

medical examiners for a certificate to practice, such register being required to be kept by this section, and where the record has been identified as one required by law to be kept, the presumption attaches, under section 10606, that it has been correctly kept. *State v. Hopkins*, 54 M 52, 65, 166 P 304.

References

Cited or applied as section 601, political code, in *State ex rel. Seres v. District Court*, 19 M 501, 506, 48 P 1104.

3118. Examination of applicants. Every person hereafter wishing to practice medicine or surgery in any of the departments of this state shall apply to said board for a certificate so to do. Every person applying shall present his or her diploma to the said board of examiners for verification as to its genuineness; if the diploma is found to be genuine, and is issued by a medical school legally organized and in good standing, whose teachers are graduates of a legally organized school, which fact said board of examiners shall determine, and if the person presenting and claiming said diploma be the person to whom the same was originally granted, at a time and place designated by said board, or at a regular meeting of said board, said applicant shall submit to an examination in the following branches, to-wit: Anatomy, physiology, materia medica, therapeutics, practice of medicine, surgery, obstetrics, diseases of women and children, diseases of the nervous system, diseases of the eye and ear; and present evidence of having attended four courses of lectures of at least six months each, but such evidence of having attended four courses of lectures shall not be required of the applicants graduating prior to July 1, 1898. Said board shall cause such examination to be both scientific and practical, and of sufficient thoroughness and severity to test the candidate's fitness to practice medicine and surgery; when desired, such examination may be conducted in the presents of the dean of any medical school, or the president of any medical society in this state. After examination, such board, if the candidate has been found qualified, shall grant a certificate to such candidate

to practice medicine and surgery in the state of Montana; which said certificate can be granted only by the consent of not less than four members of said board, and which said certificate shall be signed by the president and secretary of said board and attested by the seal thereof; provided, however, that in all cases where an applicant for a certificate under this section shall produce and exhibit to said board of examiners a certificate from a board of medical examiners, duly appointed and existing under the laws of any state of the United States, and recognizing certificates or licenses from this state, certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate, and that said board issuing said certificate has subjected the applicant to a thorough examination to ascertain this fact, or certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate; and to the further fact, if such is the case, that said applicant was exempt from examination under the provisions of the law of said state, by reason of his residence in said state in the active practice of medicine and surgery at the time of the passage in said state of said law requiring the examination of applicants to practice medicine and surgery; he or she may, at the discretion of said board of examiners, upon paying the fee required of applicants for examination under the provisions of section 3123, and otherwise complying with all the requirements of this article, receive from said board of examiners a certificate to practice medicine and surgery within this state, and upon filing said certificate with the county clerk of the county in which he resides, as is provided in section 3120, he shall be a legally qualified practitioner of medicine and surgery in this state; provided, also, that during any period intervening between the sessions of said board of examiners, any person desiring to practice medicine in this state may present his or her diploma to the president or secretary of said board, who may issue a certificate good until the next regular meeting of said board; and provided further, that all physicians and surgeons who hold certificates granted by the now existing board of medical examiners, or who are now legally entitled to practice medicine and surgery in this state, shall be exempt from the provisions of this section.

History: Ap. p. Sec. 602, Pol. C. 1895; amd. Sec. 1, Ch. 13, L. 1903; re-en. Sec. 1587, Rev. C. 1907; re-en. Sec. 3118, R. C. M. 1921.

References

Cited or applied as section 602, political

code, before amendment, in *State ex rel. Seres v. District Court*, 19 M 501, 505, 48 P 1104; *State v. Morris*, 22 M 1, 2, 55 P 360; as section 1587, revised codes, in *State v. Dodd*, 51 M 100, 103, 149 P 481; *State v. Askin*, 90 M 394, 3 P 2d 654.

3119. Examination of applicants for certificates—revocation of certificates—appeals from decision of board. No person not heretofore licensed to do so shall be permitted to practice medicine in the state of Montana, unless he shall have first been subjected to a thorough examination as to his qualifications, learning, and professional skill by the state board of medical examiners, nor until he has been issued a certificate by such board, after such examination, admitting him to practice as a physician and surgeon in the state of Montana. The board may refuse to grant a cer-

tificate for unprofessional, dishonorable, or immoral conduct. Before a certificate can be refused for such cause, the board must serve in writing upon the applicant a copy of any charge or charges against him, and appoint a day for hearing, at which the applicant or any witness in his behalf may appear and give testimony in refutation of such charges. In case the board, after such hearing, refuse a certificate to the applicant, the decision specially stating the ground upon which such refusal was made must be reduced to writing and a copy thereof delivered to the applicant upon demand. Upon a like hearing the board may refuse a certificate to any one who may publicly profess to cure or treat disease, injury, or deformity, in such a manner as to deceive the public. The hearing provided for herein must take place within twenty days after the service of the copy of the charges upon the applicant, unless further time is granted to the applicant, and the decision of the board must not be later than ten days after the day of hearing. If the decision is not rendered within said period of ten days, the applicant is not subject to any penalties for practicing without a certificate during the time that elapses before the decision is made. The board, with the concurrence of four members thereof, may revoke a certificate for unprofessional, dishonorable, or immoral conduct. Before such revocation can take place, a written complaint, specifically stating the charges against the person whose certificate is sought to be revoked, must be delivered to the board, and a copy thereof be served upon such person twenty days before the time fixed by the board for the hearing of such charges. The board must fix the time and place for the hearing, at which the person charged may appear and produce testimony in refutation of such charges. If, after such hearing, the board revoke the certificate of such person, the ground upon which such revocation is made must be specifically stated by the board in writing, and a copy thereof delivered, on demand, to the person whose certificate is revoked. In all cases of the refusal or the revocation of a certificate to practice medicine by said board, the person aggrieved thereby may appeal from the decision of the board as hereinafter provided. An appeal may be taken from the action of the state board of medical examiners in refusing to issue a certificate to practice medicine and surgery to any applicant after examination, or from the action of said board in revoking the certificate of any physician or surgeon, to the district court of the county in which such revocation or refusal was made. The appeal is taken by serving notice of appeal upon the secretary of the board of medical examiners and the attorney general of the state, within thirty days after notice from the board of medical examiners of its decision, and by filing within the same time with the clerk of the proper district court a verified copy of the decision from which appeal is taken, together with a verified copy of any charge or charges preferred against the applicant and filed with the board of medical examiners. The appellant is required, at the time of filing such appeal, to furnish and file with the clerk of the court a good and sufficient bond, to be approved by the clerk of the court, with two good and sufficient sureties, in the sum of three hundred dollars, guaranteeing the payment of all costs of the appeal should the case be decided against

the appellant, and the costs shall consist of the sheriff's fees for serving jurors, jurors' fees, and the fees of the clerk of the court. Such appeal shall thereafter be tried by the district court before a jury of six physicians—not less than two of whom shall be of the same school of medicine as the appellant—and in case such jury cannot be obtained in the county where the case is tried, the judge of such court shall order subpoenas for physicians from any adjoining county or counties, which subpoenas shall be served by the sheriff of such adjoining county upon receipt, after the clerk of the court where the subpoena is issued shall have sent by registered mail such subpoena to such sheriff. Bias or prejudice or fixed opinion shall constitute a ground of challenge to a juror for cause, and the appellant and the medical board shall each have the right to peremptorily challenge not more than two of such jurors. When the jury shall have been selected and sworn to try the cause, they constitute a higher examining board for the purpose of inquiring into whether or not the judgment of the board of medical examiners should be affirmed or overruled upon the issues presented to such board, and such jury may make such examination of the appellant as they may deem necessary or desirable. It shall take four of the jury to render a verdict, and no member of the medical board is qualified to act as a juror. The attorney general is hereby made the attorney for said board. Jurymen subpoenaed under this act shall be entitled to mileage at the rate of ten cents per mile for each and every mile by them actually traveled in attending upon the court, and of three dollars per day for their services.

History: Ap. p. Sec. 603, Pol. C. 1895; amd. Sec. 1, Ch. 95, L. 1903; amd. Sec. 1, Ch. 100, L. 1907; Sec. 1588, Rev. C. 1907; re-en. Sec. 3119, R. C. M. 1921.

Appeal

The application of a physician to the district court to have the action of the state board of medical examiners, in revoking his license for alleged unprofessional and dishonorable conduct, judicially determined, is a special proceeding, from the judgment in which an appeal lies to the supreme court, if taken within one year; but he cannot, after the time for the appeal has elapsed, have the judgment reviewed and annulled on writ of review. *State ex rel. Gattan v. District Court*, 39 M 134, 136, 101 P 961.

Whether acting under its general constitutional powers or as exercising a special and limited jurisdiction derived exclusively from the statute, the district court has no power to allow an applicant to practice medicine pending his appeal from a refusal of the state board of medi-

cal examiners to grant him a certificate. *State ex rel. State Board of Medical Examiners v. District Court*, 26 M 121, 124, 66 P 754.

Notice of Revocation

Though the board of medical examiners is empowered to revoke a certificate for unprofessional, dishonorable or immoral conduct, it cannot arbitrarily revoke the certificate of a physician without reasonable notice of the charge against him and the time and place of the trial. *State v. Schultz*, 11 M 429, 434, 28 P 343.

References

Cited or applied as section 603, political code, before amendment, in *State ex rel. Seres v. District Court*, 19 M 501, 503, 48 P 1104; *State ex rel. Riddell v. District Court*, 27 M 103, 106, 69 P 710; as section 1588, revised codes, in *State ex rel. Hackshaw v. District Court*, 48 M 477, 481, 138 P 1100; *Thien v. Wiltse*, 49 M 189, 194, 141 P 146.

3120. Certificate must be recorded. Every person obtaining a certificate from the board must, within sixty days from the date thereof, have the same recorded in the office of the county clerk in the county wherein he resides; if he removes from one county to another to practice medicine or surgery, his certificate must immediately be recorded in the county to which he removes. The county clerk must indorse upon the certificate the

date of record, and he is entitled to charge and receive his usual fees for such services, the fee to be paid by the applicant. Until the certificate be recorded, as provided by this section, the physician practicing under it is subject to the penalties prescribed in the penal code for practicing without a certificate.

History: En. Sec. 604, Pol. C. 1895; re-en. Sec. 1589, Rev. C. 1907; re-en. Sec. 3120, R. C. M. 1921.

3121. Exceptions. This act shall not apply to midwives of skill and experience, commissioned surgeons of the United States army and navy in the discharge of their official duties, nor to physicians and surgeons in actual consultation from other states and territories.

History: En. Sec. 605, Pol. C. 1895; re-en. Sec. 1590, Rev. C. 1907; re-en. Sec. 3121, R. C. M. 1921.

References

Cited or applied as section 1590, revised codes, in *State v. Wood*, 53 M 566, 570, 165 P 592.

3122. Practicing medicine without certificate—penalties. Any person practicing medicine or surgery within this state without first having obtained a certificate to practice, as provided by law, and after his certificate to practice has been revoked, or contrary to the provisions of this article, shall for each violation of the provisions of this code, or any act relating to the practice of medicine or surgery in this state, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars nor less than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding one year, nor less than ninety days, or by both said fine and imprisonment, as the court may determine. Any person shall be regarded as practicing within the meaning of this article who shall append or affix the letters M. B. or M. D., or the title of Dr. or Doctor, or any other sign or appellation in a medical sense to his or her name, who shall publicly profess to be a physician or a surgeon, who shall publicly profess either on his own behalf, in his own name, in his trade name, or on behalf of any other person, corporation, association, partnership, either as manager, bookkeeper, solicitor, or other agent, to cure, treat, relieve, or palliate any ailment, disease, or infirmity of the mind or body of another by using or prescribing any drug, medicine, or surgical treatment, or who shall recommend, prescribe, or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or other deformity, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation; provided, that nothing in this section shall be construed to restrain or restrict any legally licensed osteopathic practitioner practicing under the laws of this state. Nothing in this act shall prohibit any legally licensed pharmacist or mercantile dealer from selling any drugs or medicines which are now allowed to be sold under the laws of the state of Montana or the United States.

History: En. Sec. 606, Pol. C. 1895; amd. Sec. 1, Ch. 101, L. 1907; Sec. 1591, Rev. C. 1907; re-en. Sec. 3122, R. C. M. 1921.

Operation and Effect

By the adoption of the proviso relating to osteopaths, their status was not affected so as to permit them to practice medi-

cine or surgery, and the section is not open to the objection that it denies to every person, except osteopaths, the right to practice medicine or surgery without a certificate from the state board of medical examiners. *State v. Dodd*, 51 M 100, 105, 149 P 481; *State v. Wood*, 53 M 566, 571, 165 P 592; *State v. Hopkins*, 54 M 52, 59, 166 P 304.

A conviction upon an information drawn under this section, which undertook to state the circumstances of the

offense with unnecessary particularity, and in doing so confined the charge to the giving of a particular prescription, held not justified by the evidence. *State ex rel. Gilmore v. Dist. Court*, 45 M 335, 122 P 922.

References

Cited or applied as section 606, political code, before amendment, in *State v. Morris*, 22 M 1, 2, 55 P 360; *Swanz v. Clark*, 71 M 385, 388, 229 P 1108.

3123. Fees for examination and admission. Candidates for examination shall pay in advance to the secretary of the board of medical examiners a fee of fifty dollars (\$50.00), which fee shall defray the entire expenses of said candidate for examination before the aforesaid board of examiners. Any one failing to pass the required examination shall be entitled to a second examination within six months without fee. Candidates who shall be granted right to practice medicine in the state of Montana under the reciprocity provisions of section 3118 without examination, shall before receiving certificate of authorization to practice medicine in this state pay to the secretary of the board of medical examiners a fee of seventy-five dollars (\$75.00), and the money so received shall be turned over to the state treasurer, to be by him deposited in the medical board fund as provided by law.

History: Ap. p. Sec. 607, Pol. C. 1895; amd. Sec. 1, Ch. 114, L. 1907; Sec. 1592, Rev. C. 1907; re-en. Sec. 3123, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927.

3124. Compensation of board members. Each member of the board is hereby allowed the sum of ten dollars (\$10.00) per day and mileage while in the active and necessary discharge of his duties. And there is hereby established a fund to be known as the medical board fund. The money in such fund shall only be paid out by warrant on said fund on an order drawn by the secretary of said board, countersigned by the president. The rate of mileage and attendance before said board shall be the same as is now allowed in justice of the peace courts. And the board must report annually on the first Monday in November to the governor, which report must show all the transactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and rejected, and the names of those receiving certificates and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees and mileage paid, and by whom received, and the amount of money remaining in said fund.

History: En. Sec. 608, Pol. C. 1895; re-en. Sec. 1593, Rev. C. 1907; re-en. Sec. 3124, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927.

References

Cited or applied as section 608, political

code, in *State ex rel. State Board of Medical Examiners v. District Court*, 26 M 121, 122, 66 P 754; as section 1593, revised codes, in *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059; *State v. Hopkins*, 54 M 52, 57, 166 P 304.

CHAPTER 268

OSTEOPATHY—REGULATION OF PRACTICE

- Section 3125. Board of osteopathic examiners—appointment and term of office.
- 3126. Officers of board—certificates of qualification.
- 3127. Unlawful to practice without certificate—examinations—fees.
- 3128. Temporary certificates.

- 3129. Subjects of examination—appeal.
- 3130. Certificate does not authorize the practice of major or operative surgery.
- 3131. Record of license.
- 3132. Practice of osteopathy without license prohibited.
- 3133. Revocation of certificate.
- 3134. Compensation of board—report to governor.
- 3135. Graduates may be licensed without examination—practitioners from other states.
- 3136. Definition of term “practicing osteopathy.”
- 3137. Osteopathy not practice of medicine.

3125. Board of osteopathic examiners—appointment and term of office. The governor of this state shall appoint a board as soon as possible after the passage of this act, to be known as the state board of osteopathic examiners. Said board shall consist of three qualified, practicing resident osteopaths, each of whom shall be a graduate of a legally authorized school of osteopathy; each member of said board shall serve thereon for a term of four years, and until his successor is appointed, except in cases of the first board, on which one shall serve for four years, one for three years, and one for two years, as specified in their appointment. In case of vacancy by death or otherwise, there shall be appointed in like manner a person to serve through such unexpired term.

History: The first board of osteopathic examiners was created by house bill No. 38, pp. 48 to 51, laws of 1901.

This section en. by Ch. 51, L. 1905; re-en. Sec. 1594, Rev. C. 1907; re-en. Sec. 3125, R. C. M. 1921.

Constitutionality

In a prosecution of a chiropractor for practicing osteopathy without a license, this statute was held not repugnant to the state constitution on the ground that there is nothing in the titles of the acts constituting the statute indicating an intention to include “chiropractic”; the latter, like the former, having to do with the art of healing by the use of the hands, falls within the definition of “osteopathy,” and is therefore included within it. *State v. Hopkins*, 54 M 52, 56, 166 P 304.

The practice of osteopathy is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059.

The statute regulating the practice of osteopathy is not invalid as arbitrary and unreasonable class legislation, contrary to the fourteenth amendment to the federal constitution; neither does it make an arbitrary classification denying the right of citizens to engage in a lawful occupation, and is therefore not an abuse of the police power of the state. *State v. Hopkins*, 54 M 52, 59, 166 P 304.

References

Cited or applied as section 1594, revised codes, in *State v. Wood*, 53 M 566, 569, 165 P 592; *State v. Dodd*, 51 M 100, 105, 149 P 481.

3126. Officers of board—certificates of qualification. Said board of osteopathic examiners shall elect a president, a secretary, and treasurer on the first Tuesday in March each year, from among their number, and shall have a common seal, and its president and secretary shall have power to administer oaths. Said board shall hold meetings for the examinations at the state capitol on the first Tuesday in March and September of each year, and such other meetings as may be deemed necessary, each session thereof not to exceed three days, and shall issue a certificate of qualification to all applicants having a diploma from a legalized, recognized, and regularly conducted school of osteopathy as such, at the time it was issued, or who pass required examinations as provided by section 3128. Said certificates shall be signed by the president and secretary of said board, and attested by its seal, and shall be conclusive of the right of the lawful holder thereof to practice osteopathy in this state. Said board shall keep

a record of all proceedings; also a register of all applicants for a license, together with his or her name and age and time spent in the study and practice of osteopathy, and the name and location of the school or institute of osteopathy from which said applicant holds a diploma; and shall keep a register which shall show the names of all applicants licensed; and those who are rejected under this act. Said books shall be prima facie evidence of all matters recorded therein.

History: En. Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R. C. M. 1921.

Sufficiency of Proof to Support Violation

The record of the applicants for license, required by this section to be kept by the

secretary of the board of osteopathic examiners, showing that defendant had never applied for a license or a temporary certificate, was, in the absence of contradiction, sufficient to support the charge that he had been practicing without a license. *State v. Hopkins*, 54 M 52, 64, 166 P 304.

3127. Unlawful to practice without certificate—examinations—fees.

It shall be unlawful for any person to practice osteopathy in this state without a license from said board; provided, that all persons practicing osteopathy within this state prior to the passage of this act and holding a diploma from a legally authorized school of osteopathy of good repute as such, and wherein the course of study comprises twenty months or four terms of five months each, may be licensed to practice osteopathy in the state by submitting to said board of osteopathic examiners such diploma and satisfying such board that they are legal holders thereof, or by undergoing an individual examination as hereinafter provided at a regular meeting of said board for examination. The fee for such license shall be twenty dollars payable to the secretary of said board of examiners when application is made for certificates; provided, that in case of failure of any applicant to pass a satisfactory examination, he will be entitled to a second examination without charge at the next succeeding meeting of the board; provided that all graduates of a reputable school of osteopathy who present themselves for examination and a license, and who have graduated later than April, 1907, shall present satisfactory evidence to the board of having actually attended such a school for a period of not less than three school years of nine months each; provided that all graduates of reputable schools of osteopathy who present themselves for examination and who have graduated later than January, 1919, shall present satisfactory evidence to the board of having actually attended such a school for a period of not less than four school years of eight months each, which was preceded by a four-years' high school course or its scholastic equivalent.

Each individual, after the first year of registration, holding a certificate to practice under this act and who is in active practice in this state, shall on or before the first day of April of each year pay a renewal fee of two (\$2.00) dollars to the secretary of the board of osteopathic examiners; and each individual, after the first year of registration, holding a certificate to practice under this act, who is not in active practice, shall on or before the first of April of each year pay a renewal fee of one (\$1.00) dollar to the secretary of the board. The secretary of the board shall before the 15th of March of each year send a notice to each individual holding a valid cer-

tificate to practice under this act and from whom a fee is due stating that such fee is due.

The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. Provided that the board may reinstate a practitioner whose certificate has lapsed upon the payment of all back renewal fees or upon the payment of ten (\$10.00) dollars if the lapsed fees exceed that amount.

History: En. Ch. 51, L. 1905; re-en. Sec. 1596, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1925.

NOTE.—Sections 3138 to 3154 of this code now legalize the practice of chiropractic. All annotations to cases differentiating chiropractic from osteopathy were eliminated from the revised codes of Montana in 1921.

Operation and Effect

In a prosecution for practicing osteopathy without a license, the state is not required to negative the defendant's possession of the temporary certificate re-

ferred to in this section, this being a matter of defense. *State v. Wood*, 53 M 566, 569 et seq., 165 P 592; *State v. Hopkins*, 54 M 52, 64, 166 P 304.

An information charging one with practicing osteopathy without first obtaining a license need not allege that he had procured a temporary certificate permitting him to practice, this being a matter of defense. *State v. Hopkins*, 54 M 52, 64, 166 P 304.

References

Cited or applied as section 1596, revised codes, in *State v. Wood*, 53 M 566, 569, 165 P 592.

3128. Temporary certificates. The secretary of the board of osteopathic examiners may upon examination, grant a certificate to an applicant to practice osteopathy until the next meeting of said board when he shall report the facts, at which time the temporary certificate shall expire, but such temporary certificate shall not be granted by the secretary of said board after the board has once rejected the applicant.

History: En. Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R. C. M. 1921.

3129. Subjects of examination—appeal. All persons, after March 1, 1901, commencing the practice of osteopathy in this state, in any of its branches, shall apply to said board for a license to do so, and such applicant at the time and place designated by said board, shall submit to an examination in the following branches, to-wit: Anatomy, physiology, chemistry, pathology, gynecology, obstetrics, and theory and practice of osteopathy, and such other branches as are taught in well regulated and recognized schools of osteopathy and deemed advisable by said board and shall present evidence of having actually attended for at least twenty months, or four terms of five months each a legally authorized and regularly conducted school of osteopathy, recognized by said board of osteopathic examiners, except as otherwise provided in section 3126 of this code. All examination papers on subjects peculiar to osteopathy shall be examined and their sufficiency passed upon by members of said board, whose decision shall be final thereon subject, however, to the right of appeal, which appeal shall be to the district court of the county in which the examination is held and said district court shall review such examination without a jury and shall have the right to take testimony thereon and the decision of such district court shall be also subject to the right of appeal to the supreme court by any persons aggrieved thereby, and upon such appeal the supreme court shall have the right to consider questions

of both law and fact, and said board shall cause such examination to be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy. After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of such board, attested by the seal thereof. For the support and maintenance of said board, the fee for such examination and license shall be twenty dollars, which shall be paid in advance to the secretary of said board to defray the expenses thereof.

History: En. Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921.

3130. Certificate does not authorize the practice of major or operative surgery. The certificate provided for in the preceding section shall not authorize the holder thereof to prescribe or use drugs in the practice of osteopathy, or to perform major or operative surgery; and any person holding a certificate under this act, who shall prescribe or use drugs in the practice of osteopathy, or who shall perform a major or operative surgery, shall be deemed guilty of a misdemeanor; provided, that nothing in this act shall be so construed as to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the state board of medical examiners of the state of Montana.

History: En. Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R. C. M. 1921.

3131. Record of license. The person receiving such license shall have it recorded in the office of the county clerk in the county in which he or she resides, and the record shall be indorsed thereon. In case the person so licensed shall remove to another county to practice, the holder shall record the license in a like manner in the county into which he or she removed, and the county clerk is entitled to charge and receive the usual fee for making such record.

History: En. Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R. C. M. 1921.

3132. Practice of osteopathy without license prohibited. Any person practicing osteopathy in this state without first obtaining a license herein provided for, or contrary to the provisions of this act, or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, nor less than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding one year, nor less than ninety days, or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this act.

History: En. Sec. 8, p. 51, L. 1901; amd. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R. C. M. 1921.

3133. Revocation of certificate. Any such certificate may be revoked by said board, upon satisfactory proof of fraud, or misrepresentation in

procuring the same, or for any violation of the provisions of this act, or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R. C. M. 1921.

3134. Compensation of board—report to governor. Out of the funds coming into the possession of said board each of the members of said board may receive as compensation the sum of five dollars for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. No part of the compensation or other expenses of said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon a warrant of the president and secretary thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act. Said board shall make an annual report of its proceedings to the governor of the state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year.

History: En. Sec. 10, p. 51, L. 1901; re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921.

3135. Graduates may be licensed without examination—practitioners from other states. Every graduate of a reputable school of osteopathy, who has been strictly examined and thereafter licensed to practice osteopathy in another state, may be licensed to practice osteopathy in this state upon the production to the board of his or her diploma, and the license obtained in such other state and satisfactory evidence of good moral character, and the payment of all legal fees required of other applicants; but the board may examine the applicant as to his or her qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R. C. M. 1921.

3136. Definition of term “practicing osteopathy.” Every person shall be deemed practicing osteopathy within the meaning of this act who shall:

1. Append to, or use in connection with his or her name the words “doctor of osteopathy, or diplomat of osteopathy, or osteopath, or osteopathist, or osteopathic practitioner, or osteopathic physician,” or words of like import, or any abbreviation thereof, or the letters “D. O.”; or who shall

2. Profess publicly to, or who shall, either on his own behalf, in his own name, or in his trade-name, or in behalf of any other person, corporation, association, partnership, either as manager, bookkeeper, practitioner, or agent, treat, cure, alleviate, or relieve any ailment or disease of either mind or body, or cure or relieve any fracture or misplacement or abnormal condition, or bodily injury or deformity, by any treatment, or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts, by the use of the hands, or mechanical appliances, in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect, in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received, or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatso-

ever; provided, however, that nothing in this section shall be construed to restrain or restrict any legally licensed physician or surgeon in the practice of his profession.

History: Ap. p. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R. C. M. 1921.

Operation and Effect

This section does not authorize an osteopath to practice medicine or surgery, but requires him to confine his practice to treatment by the use of the hands or mechanical appliances. *State v. Dodd*, 51 M 100, 106, 149 P 481.

Unless an exception found in a statute is part of the definition of the offense sought to be described, the state is not required to negative such exception in an indictment or information. The proviso

contained in the second subdivision of the above section is not such an exception, since neither physician nor surgeon can practice osteopathy without first obtaining a license therefor. *State v. Wood*, 53 M 566, 569 et seq., 165 P 592; *State v. Hopkins*, 54 M 64, 166 P 304.

In an indictment or information the state is not required to negative the exception contained in subdivision 2 of this section. *State v. Wood*, 53 M 566, 165 P 592.

A physician or surgeon is not entitled, under the statute, to practice osteopathy without a license from the state board of osteopathic examiners. *State v. Hopkins*, 54 M 52, 59, 166 P 304.

3137. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body, commonly known as osteopathy, is hereby declared not to be the practice of medicine or surgery within the meaning of sections 3116 to 3124, inclusive of this code, and not subject to the provisions of said sections.

History: En. Sec. 11, p. 51, L. 1901; re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R. C. M. 1921.

References

Cited or applied as section 1606, revised codes, in *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1069; *State v. Hopkins*, 54 M 52, 57, 166 P 304.

CHAPTER 269

CHIROPRACTIC—REGULATION OF PRACTICE

- Section 3138.** State board of chiropractic examiners created—qualifications of members.
3139. Appointment of board—term of office—future appointments.
3140. Organization of board—meetings—powers and duties.
3141. Practicing without license—license without examination—temporary permits.
3142. Application to practice—fees for license.
3143. Examinations—subjects embraced in.
3144. Definition of chiropractic.
3145. Duties of chiropractic practitioners.
3146. Rights and limitations governing practice.
3147. Refusal and revocation of license—proceedings—reinstatement.
3148. Recordation of license—failure or refusal to record.
3149. Renewal.
3150. Disposition of fees—receipts and disbursements—per diem and mileage.
3151. Bond of treasurer—dismissal of members of board.
3152. Admission to practice of persons from other states.
3153. Penalty for violation of act.
3154. Limitations upon construction of act.

3138. State board of chiropractic examiners created—qualifications of members. There is hereby created and established a board to be known as the state board of chiropractic examiners, and said board shall be composed of three practicing chiropractors of integrity and ability, who shall be residents of the state of Montana, and who shall have practiced chiropractic continuously in the state of Montana for a period of at least one

year. No two members of said board shall be graduated from the same school or college of chiropractic.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R. C. M. 1921.

3139. Appointment of board—term of office—future appointments. The governor of the state of Montana shall, within thirty days after the taking effect of this act, appoint three chiropractors, who shall possess the qualifications specified in section 3138, to constitute the members of said board. Said members shall be so classified by the governor that the term of office of one shall expire in one year, one in two years, and one in three years from the date of appointment. Annually thereafter the governor shall appoint one member, who shall be a licensed chiropractic practitioner and possessed of the qualifications specified in section 3138, to serve for a period of three years and shall fill all vacancies in said board caused by death or otherwise as soon as practicable.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3139, R. C. M. 1921.

3140. Organization of board—meetings—powers and duties. Said board of chiropractic examiners shall convene within thirty days after their appointment and elect annually a president, vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting on the first Tuesday of October in each year at the capital of the state, and shall hold special meetings at such times and places as the board, or a majority of the members thereof, may designate; provided, that not more than four meetings shall be held in any one year. A majority of the board shall constitute a quorum.

Said board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. They shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of chiropractic. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection. Said board shall also keep on file with the secretary of state a copy of their rules and regulations for public inspection.

A license to practice chiropractic within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R. C. M. 1921.

3141. Practicing without license—license without examination—temporary permits. It shall be unlawful for any person to practice chiropractic in this state without first obtaining a license as provided in this act; provided, however, that all persons practicing chiropractic within this state for three months prior to the passage of this law, and holding a

diploma or certificate from a legally chartered school of chiropractic of good repute, may be licensed to practice chiropractic in this state by submitting to said board of chiropractic examiners said diploma or certificate, and satisfying said board that they are the legal holders thereof, or by taking the examination herein provided for at any regular or special meeting of said board; and, provided further, that when application for examination for license is regularly filed with the board, as provided in the next section, the board may issue to the applicant a temporary permit to practice, good until the next meeting of the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R. C. M. 1921.

3142. Applications to practice—fees for license. Any person wishing to practice chiropractic in this state after March 15, 1919, shall make application to said board of chiropractic examiners through the secretary-treasurer thereof, upon such form and in such manner as may be prescribed and directed by the board, at least fifteen days prior to any meeting of said board. Each applicant shall be a graduate of a chartered school of chiropractic, in which he actually attended a course of study of at least four school years of eight months each, preceded by a four years' high school course. Application shall be in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, the length of time he has been engaged in practice, accompanying the same with proofs thereof, in the shape of diplomas, certificates, etc., and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of chiropractic examiners by each applicant for a license, a fee of twenty-five dollars (\$25.00), ten dollars (\$10.00), of which shall accompany application and the remainder, fifteen dollars (\$15.00) shall be paid upon the issuance of license. Like fees shall be paid for any subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1933.

3143. Examinations—subjects embraced in. Examinations for license to practice chiropractic shall be made by said board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed to the members of the board until after the examination papers are graded.

All examinations shall be made in writing, the subjects of which shall be as follows: Anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed from time to time by the board to meet new conditions. A license shall be granted to all applicants who shall correctly answer seventy-

five per centum of all questions asked, and if any applicant shall fail to answer correctly sixty per centum of the questions on any branch of said examination, he or she shall not be entitled to a license.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R. C. M. 1921.

3144. Definition of chiropractic. Chiropractic is the science that teaches that disease results from anatomic disrelation, and teaches the art of restoring anatomic relation by a process of adjusting by the use of the hand.

No other means of securing health shall be construed to be chiropractic except the application of the inherent qualities at the time in the patient or appertaining to the chiropractor.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R. C. M. 1921.

3145. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, shall report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R. C. M. 1921.

3146. Rights and limitations governing practice. Chiropractors licensed under this act shall have the right to practice that science defined as chiropractic under section 3144 of this code, in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix Dr. or Doctor as a title, but shall not in any way imply that they are regular physicians or surgeons. They shall not prescribe for or administer to any person any medicine or drugs, nor practice medicine or surgery, nor osteopathy; except that the use of antiseptics for purposes of sanitation and hygiene, and to prevent infection and contagion, shall be permitted.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R. C. M. 1921.

3147. Refusal and revocation of license—proceedings—reinstatement. The state board of chiropractic examiners may refuse to grant or revoke a license to practice chiropractic in this state, or may cause a licentiate's name to be removed from the records in the office of the recorder of deeds in this state, upon any of the following grounds, to-wit: The employment of fraud or deception in applying for a license or in passing an examination provided for in this act; the practice of chiropractic under a false or assumed name, or the impersonation of another practitioner of like or different name; the conviction of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics, or stimulants, to such an extent as to incapacitate him or her for the performance of their professional duties. Any person who is a licentiate, or who is an applicant for a license to practice chiropractic, against whom any of the foregoing grounds for revoking or refusing a license is presented to said board with a view of having the board revoke or refuse to grant a license, shall

be furnished with copy of the complaint, and shall have a hearing before said board in person or by attorney, and witnesses may be examined by said board respecting the guilt or innocence of said accused.

Said board may at any time within two years of the refusal, revocation, or cancellation of registration under this section, by a majority vote, issue a new license or grant a license to the person affected, restoring him to or conferring upon him all the rights and privileges of, and pertaining to the practice of chiropractic as defined and regulated by this act. Any person to whom such rights and privileges have been restored shall pay to the secretary-treasurer the sum of twenty-five dollars upon issuance of a new license.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3147, R. C. M. 1921.

3148. Recordation of license—failure or refusal to record. Every person who shall receive a license from the state board of chiropractic examiners shall have it recorded in the office of the recorder of deeds of the county of which he resides, and shall likewise have it recorded in the counties to which he shall subsequently remove for the purpose of practicing chiropractic.

The failure or refusal on the part of the holder of a license to have it recorded before he or she shall be in the practice of chiropractic in this state, after having been notified by the state board of chiropractic examiners to do so, shall be sufficient grounds to revoke or cancel a license and render it null and void. The recorder shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When any such licenses shall be presented to him for record, he shall stamp upon the face thereof his signed memorandum of the date when such license was presented for record.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R. C. M. 1921.

3149. Renewal. One of the purposes of this act is to require each licensee to keep abreast of and informed about the developments and advances in the science of chiropractic, and, therefore, each license shall expire on the first day of September in each year, and shall be renewed then or thereafter, by the board, upon the payment of a renewal fee of five dollars (\$5.00), and the presentation of evidence satisfactory to said board that the said licensee, in the year preceding the application for renewal, attended at least one of the two-day educational programs as conducted by the Montana Chiropractic Association; provided, that the board may grant renewals, but not consecutive renewals, upon a showing satisfactory to said board that attendance upon said educational programs was unavoidably prevented, provided that new licensees during the six months preceding said September first, by examination, shall be granted renewal licenses without attending said educational programs, provided, that a failure to renew a license shall not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license; provided, that nothing herein shall prevent a renewal of said license if in said preceding year for any

reason, at least one of the said educational programs is not conducted in the state of Montana.

History: En. Sec. 12, initiative measure, Nov. 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933.

3150. Disposition of fees—receipts and disbursements—per diem and mileage. All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in a special fund of the state board of chiropractic examiners and shall pay the same out in warrants drawn by the auditor of the state thereof, upon vouchers issued and signed by the president and the secretary-treasurer of said board. Said money so received and placed in said fund may be used by the state board of chiropractic examiners in defraying their expenses in carrying out the provisions of this act.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of ten dollars for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of three cents per mile for each mile necessarily traveled in going to and from any meeting of said board.

Such per diem and mileage and such other incidental expenses necessarily connected with said board shall be paid out of the fund of the state board of chiropractic examiners, and not otherwise.

History: En. initiative measure, Nov. 1918; re-en. Sec. 3150, R. C. M. 1921.

3151. Bond of treasurer—dismissal of members of board. The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper. Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed chiropractor practicing in this state, who shall be a graduate of a different school than those represented on the board.

History: En. initiative measure, Nov. 1918; re-en. Sec. 3151, R. C. M. 1921.

3152. Admission to practice of persons from other states. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this act, may, in the discretion of the board, be issued a license to practice in this state without examination, upon payment of the fee of twenty-five dollars as herein provided.

History: En. initiative measure, Nov. 1918; re-en. Sec. 3152, R. C. M. 1921.

3153. Penalty for violation of act. Any person who shall practice, or attempt to practice chiropractic, or any person who shall buy, sell, or fraudulently obtain any diplomas, or license to practice chiropractic whether recorded or not, or who shall use the title chiropractor, D. C. Ph. C., or any word or title to influence belief that he is engaged in the practice of

chiropractic, without first complying with the provisions of this act, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days or more than six months, or by both such fine and imprisonment.

History: En. initiative measure, Nov. 1918; re-en. Sec. 3153, R. C. M. 1921.

3154. Limitations upon construction of act. Nothing in this act contained shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined, is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same, and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of sections 3125 to 3137, inclusive, of this code, nor liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; re-en. Sec. 3154, R. C. M. 1921.

CHAPTER 270

PODIATRY—REGULATION OF PRACTICE

Section 3154.1.	Definitions.
3154.2.	License—amputation not allowed.
3154.3.	Podiatry examiners—examinations—qualifications—schools—fees—non-resident practitioners.
3154.4.	Examinations—fees.
3154.5.	Designation of licensees—renewals—re-issuance of license—display of license required.
3154.6.	Refusal or revocation of license.
3154.7.	Disposal of moneys collected.
3154.8.	Compensation of examiners—expenses.
3154.9.	Penalty for violations of act.
3154.10.	Application of act.

3154.1. Definitions. Podiatry (sometimes called chiropody) shall, for the purpose of this act, mean the diagnosis, medical and surgical treatment of ailments of the human foot. Podiatrist shall mean one practicing podiatry.

History: En. Sec. 1, Ch. 2, L. 1923.

3154.2. License—amputations not allowed. It shall be unlawful for any person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, without first obtaining from the state board of medical examiners a license authorizing the practice of podiatry in this state, except as hereinafter provided. No podiatrist shall amputate the human foot or toe or toes.

History: En. Sec. 2, Ch. 2, L. 1923.

3154.3. Podiatry examiners—examinations—qualifications—schools—fees—non-resident practitioners. That at the annual meeting of the state board of medical examiners it shall select two physicians from its own membership and two practicing podiatrists, resident of this state and actively engaged in the practice of podiatry, and graduate of an accredited school

of podiatry or chiropody, who, together with the secretary of the state board of medical examiners, shall constitute the podiatry examiners for the year. The examinations shall be held semi-annually at such places and time as the state board of medical examiners shall direct. All applicants for license shall have attained the age of twenty-one years and shall be of good moral character; they shall have had at least one year of instruction in and be graduates of some school of podiatry, recognized as being in good standing by the state board of medical examiners, but after July 1st, 1925, no school of podiatry shall be accredited by said board as a school of good standing which does not require for graduation a course of study of at least two years, provided, however, that all podiatrists, actively engaged in the practice of podiatry one or more years in the state of Montana, prior to July, 1923, whether graduates or not, shall, upon furnishing proof thereof to said board and upon payment of a fee of ten dollars (\$10.00), be entitled to a license without examination; and applications for such licenses shall be filed with the state board of medical examiners not later than the first day of January, 1924; and provided, further, that upon payment of a fee of twenty-five dollars (\$25.00), a license without examination may be issued to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state.

History: En. Sec. 3, Ch. 2, L. 1923.

3154.4. Examinations—fees. After the passage of this act, any person not exempt from examination under section 3154.3 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, limited in their scope to the treatment of the human foot, and, if found qualified, shall receive a license. The minimum requirements for a license shall be a general average of seventy-five per cent (75%) in all the subjects involved, and not less than fifty per cent (50%) in any one subject. Examination fees of twenty-five dollars (\$25.00) shall be paid to the secretary of the state board of medical examiners. Any applicant failing in the examination and being refused a license shall be entitled within six months of such refusal to a re-examination, but two such re-examinations shall exhaust his privilege under the original examination.

History: En. Sec. 4, Ch. 2, L. 1923.

3154.5. Designation of licensees—renewals—re-issuance of license—display of license required. All licensees shall be designated as registered podiatrists, and shall not use any title or abbreviations thereof without the designation "registered podiatrist, practice limited to the foot," and shall not mislead the public as to their limited professional qualifications to treat human ailments. All licenses shall be recorded in the manner of other medical licenses in the office of the secretary of the state board of medical examiners. A renewal license fee of five dollars (\$5.00) shall be paid annually on July 1st of each year, and if not paid within three months, the license shall be revoked and shall only be re-issued upon original application

and payment of fee of fifty dollars (\$50.00). All licenses shall be conspicuously displayed at the office or other places of practice.

History: En. Sec. 5, Ch. 2, L. 1923.

3154.6. Refusal or revocation of license. The state board of medical examiners may, after due hearing, refuse to grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent presentation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for any other legitimate purposes, but said board may re-issue a license after a lapse of six months.

History: En. Sec. 6, Ch. 2, L. 1923.

3154.7. Disposal of moneys collected. All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to a special fund to be known and designated as "Medical Board Fund," and such fund shall not be used or expended for any purpose other than as provided for in section 3124.

History: En. Sec. 7, Ch. 2, L. 1923.

3154.8. Compensation of examiners—expenses. Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services out of the funds created by the payment of fees by applicants for licenses, the sum of five dollars (\$5.00) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capital. All printing, postage and other contingent expenses, necessarily incurred, shall be paid from said funds, and all expenses shall be itemized, verified, audited, upon presentation by the state board of medical examiners, and a warrant drawn therefor by the state auditor on the medical board fund in the same manner as other expenses of the state board of medical examiners.

History: En. Sec. 8, Ch. 2, L. 1923.

3154.9. Penalty for violations of act. Any person who shall knowingly violate any of the provisions of this act and upon conviction thereof shall be fined the sum not exceeding one thousand dollars (\$1,000.00) or be imprisoned in the county jail not to exceed two years, or both.

History: En. Sec. 9, Ch. 2, L. 1923.

3154.10. Application of act. This act shall not apply to any physician licensed by the state board of medical examiners of this state, nor to any practitioner licensed under sections 3125 to 3154, nor to surgeons of the United States army, navy and United States public health service, when in actual performance of their official duties.

History: En. Sec. 10, Ch. 2, L. 1923.

CHAPTER 271

OPTOMETRY—REGULATION OF PRACTICE

Section 3155.	Practice of optometry.
3156.	Provisions regulating practice of optometry.
3157.	Examiners in optometry.
3158.	Officers of board—meetings.
3159.	Examinations—admission to practice—non-residents.
3160.	Certificate to issue to persons now engaged in practice.
3161.	Renewal of registration—revocation—fees.
3162.	Registration of certificate in county.
3163.	Failure to apply for certificate—forfeiture of right.
3164.	Certificate to be displayed in office.
3165.	Compensation of examiners—report.
3166.	Revocation of certificate for cause.
3166.1.	Second revocation.
3167.	Penalty for violations.
3168.	Jurisdiction of justices of the peace.
3169.	Act not to apply to physicians and surgeons.

3155. Practice of optometry defined. The practice of optometry is defined as follows, namely: The employment of subjective and objective mechanical means, without the use of drugs, to determine the accommodative and refractive states of the eye, and the scope of the functions in general.

History: En. Chap. 138, L. 1907; re-en. Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R. C. M. 1921.

Police Regulation

The practice of optometry is a proper subject for police regulation. *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059.

3156. Provisions regulating practice of optometry. It shall be unlawful for any person:

Subdivision 1. To practice optometry in the state of Montana unless he shall first have obtained a certificate of registration, in the manner herein-after provided, and filed the same or a certified copy thereof with the county clerk of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; or

Subdivision 2. To sell or barter, or offer to sell or barter any certificate of registration issued by the state board of optometry; or

Subdivision 3. To purchase or procure by barter any such certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or

Subdivision 4. To alter with fraudulent intent in any material regard such certificate of registration; or

Subdivision 5. To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or

Subdivision 6. To practice optometry under a false or assumed name; or

Subdivision 7. To wilfully make any false statement in a material regard in an application for an examination before the state board of optometry or for a certificate of registration; or

Subdivision 8. To advertise by displaying a sign or by otherwise holding himself out to be an optometrist or optician without having at the time of so doing a valid unrevoked certificate of registration; or

Subdivision 9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work upon such lenses; or

Subdivision 10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eye glasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be deemed to be practicing optometry within the meaning thereof.

History: En. Ch. 138, L. 1907; re-en. Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1925.

3157. Examiners in optometry. A board is hereby created to be known as the Montana state board of examiners in optometry which shall consist of three members appointed by the governor. No person shall be eligible to appointment who is not a registered optometrist of the state of Montana and actually engaged in the practice of optometry in the state of Montana during the term of his office. Each of the members shall hold office for a term of six years or until his successor is appointed and qualified and shall be so classified that one member of said board shall retire every two years. The present members of the Montana state board of examiners in optometry shall continue to serve and act as member of the state board of optometry, but under the provisions of this act during their respective terms or until their successors are appointed and qualified. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, which shall be administered by the secretary of state, and filed in his office; and said board shall have a common seal. Appointments to fill vacancies caused by death, resignation or removal shall be made for the residue of such term by the governor.

History: En. Ch. 138, L. 1907; re-en. Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R. C. M. 1921; amd. Sec. 2, Ch. 171, L. 1925.

3158. Officers of board—meetings. Said board shall choose at its first regular meeting, and annually thereafter, one of its members president and one secretary thereof, who severally shall have the power during their term of office to administer oaths and take affidavits, certifying thereto under their hands and the seal of the board. Said board shall meet at least once in each year at Helena, or some other place designated by the president, on the fourth Monday of July for the purpose of giving examinations in optometry, and in addition thereto, whenever, and wherever the president and secretary thereof shall call a meeting. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable times be open to public inspection.

History: En. Ch. 138, L. 1907; re-en. Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R. C. M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927.

3159. Examinations—admission to practice—non-residents. Subdivision 1. Every person, before beginning to practice optometry in this state shall pass an examination before said board of examiners. All examinations shall be practical in character and designated to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The board shall, from time to time, publish and distribute the examination requirements for a certificate to practice optometry in the state of Montana.

Subdivision 2. No person shall be eligible to take said examination who is not 21 years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

Subdivision 3. On and after July 1st, 1925, no person shall be eligible to take said examination unless he shall have certificates of graduation from an accredited high school and from a school of optometry wherein the practice and science of optometry is taught in a course of study covering four semesters, or two years, of actual attendance. In lieu of said certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six years in some other state or states.

Subdivision 4. Every person desiring to be examined in optometry shall file an application in the manner prescribed by said board at least four weeks before the examination shall be held, and a fee of twenty-five dollars (\$25.00) shall accompany said application.

Subdivision 5. Every person successfully passing said examination shall be registered in the board register, which shall be kept by the secretary of said board, and upon the payment of a fee of ten dollars (\$10.00) shall receive a certificate of registration signed by the members of said board.

Subdivision 6. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five (75%) per cent in his examination in such other state, he may, in the discretion of the said board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of all fees, provided the state from which said applicant comes offers equal privileges to applicants for certificates of registration from this state.

History: En. Ch. 138, L. 1907; re-en. Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R. C. M. 1921; amd. Sec. 4, Ch. 171, L. 1925.

3160. Certificate to issue to persons now engaged in practice. Every person who is engaged in the practice of optometry in the state of Montana at the time of the passage of this act, shall, within three months thereafter, file an affidavit in proof thereof with said board, who shall make and keep a record of such persons, and shall, in consideration of the sum of five dollars, issue to him a certificate of registration.

History: En. Ch. 138, L. 1907; re-en. Sec. 1612, Rev. C. 1907; re-en. Sec. 3160, R. C. M. 1921.

3161. Renewal of registration—revocation—fees. Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of ten dollars

(\$10.00) in return for which a renewal of registration shall be issued. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety days notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars (\$25.00).

History: En. Ch. 138, L. 1907; re-en. Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4¹/₂, Ch. 171, L. 1925.

3162. Registration of certificate in county. Recipients of said certificate of registration shall present the same for record to the clerk of the district court of the county in which they reside, and shall pay a fee of fifty cents to the clerk for recording the same. Said clerk shall record said certificate in a book to be provided by him for that purpose. Any person so licensed, removing his residence from one county to another in this state, shall, before engaging in the practice of optometry in such other county, obtain from the clerk of the district court of the county in which said certificate of registration is recorded a certified copy of such record, or else obtain a new certificate of registration from the board of examiners, and shall, before commencing practice in such county, file the same for record with the clerk of the court of the county to which he removes, and pay the clerk thereof, for recording the same, a fee of fifty cents. Any failure, neglect, or refusal on the part of any person holding such certificate or copy of record to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. Such board shall be entitled to a fee of one dollar for the reissue of any certificate, and the clerk of the district court of any county shall be entitled to a fee of one dollar for making and certifying the copy of the record of any such certificate.

History: En. Ch. 38, L. 1907; re-en. Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R. C. M. 1921.

3163. Failure to apply for certificate—forfeiture of right. Any person entitled to a certificate, as provided for in section 3160 of this code, who shall not, within six months after the passage thereof, make written application to the board of examiners for a certificate of registration, accompanied by a written statement, signed by him, and duly verified before an officer authorized to administer oaths within this state, fully setting forth the grounds upon which he claims such certificate, shall be deemed to have waived his rights to a certificate under the provisions of said section. Any failure, neglect, or refusal on the part of any person holding such certificate to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same.

History: En. Ch. 138, L. 1907; re-en. Sec. 1615, Rev. C. 1907; re-en. Sec. 3163, R. C. M. 1921.

3164. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same

in a conspicuous part of his office wherein the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; re-en. Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R. C. M. 1921.

3165. Compensation of examiners—report. Out of the funds coming into the possession of said board, each member thereof may receive as compensation, the sum of fifteen dollars (\$15.00) and necessary expenses for each day actually engaged in the duties of his office. Such sums shall be paid from the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and the secretary of said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

History: En. Ch. 138, L. 1907; re-en. Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925.

3166. Revocation of certificate for cause. Said board shall have the power to revoke any certificate of registration granted by it under this act for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or for unprofessional conduct. Unprofessional conduct shall mean: obtaining any fee by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optician or optometrist to perform any work covered by this act; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; provided, that this act shall not prohibit legitimate or truthful advertising by any registered optometrist and provided that before any certificate shall be revoked, the holder thereof shall have notice in writing of the charge or charges against him, and, at a day specified in said notice, at least ten days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witness against him. Any person whose certificate has been revoked may appeal to the courts or may after the expiration of ninety days apply to have the same re-granted and the same shall be re-granted him upon a satisfactory showing that the disqualification has ceased.

History: En. Ch. 138, L. 1907; re-en. Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. 3166, R. C. M. 1921; amd. Sec. 6, Ch. 171, L. 1925.

3166.1. Second revocation. Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of regis-

tration or examination has been revoked a second time shall not be permitted to practice optometry in this state.

History: En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927.

3167. Penalty for violations. Any person who shall violate any of the provisions of this act shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred (\$500.00) dollars, or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment as the court may determine. All fines thus received shall be paid into the common school fund of the county in which such conviction takes place.

History: En. Ch. 138, L. 1907; re-en. Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925.

3168. Jurisdiction of justices of the peace. Justices of the peace and the respective municipal courts shall have jurisdiction of violations of this act. It shall be the duty of the respective county attorneys to prosecute all violations of this act.

History: En. Ch. 138, L. 1907; re-en. Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R. C. M. 1921.

3169. Act not to apply to physicians and surgeons. Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana, nor to persons who sell spectacles or eye-glasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: En. Ch. 138, L. 1907; re-en. Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R. C. M. 1921.

References

Cited or applied as section 1621, revised codes, in *Johnson v. City of Great Falls*, 38 M 369, 374, 99 P 1059; *Swanz v. Clark*, 71 M 385, 388, 229 P 1108.

CHAPTER 272

PHARMACY—REGULATION OF AND RESTRICTION ON SALE OF OPIATES—DRUG DEALERS' LICENSE

Section 3170.	Drugs to be sold by registered pharmacists.
3171.	Registered pharmacists defined—fee for registration.
3172.	Assistant pharmacists.
3173.	State board of pharmacy—appointment and term of office—vacancies.
3174.	Organization of board—officers—examination of applicants.
3175.	Salaries and expenses of officers.
3176.	Application for registration—fees and certificate.
3177.	Annual renewal of registration—fees.
3178.	Certificate—contents and display.
3179.	Violation of act a misdemeanor.
3180.	Wrongful exhibition of certificate of registration.
3181.	Compounding of drugs by persons other than registered pharmacists—sale of patent medicines.
3182.	Official preparations must be carried for sale for compounding drugs.
3183.	Registration of pharmacists without examination—reciprocity.
3184.	Adulterated drugs.
3185.	Sale of poisons regulated.
3185.1.	Poison register to be kept by pharmacists may be required by state board of pharmacy.
3185.2.	Revocation of license for failure to keep record or falsifying.
3185.3.	Sale of poison without keeping register constitutes misdemeanor.

- 3187. Restrictions upon sale or prescription of opiates.
- 3188. Penalty for violation of act.
- 3189. Regulation of sale of opium and other narcotics.
- 3190. Remedies excepted from act.
- 3191. Filing of prescriptions.
- 3192. Use of opiates by physicians, veterinary surgeons and dentists.
- 3193. Officers charged with administration of act—secrecy of record.
- 3194. Physicians to report prescriptions issued to drug addicts.
- 3195. Arrest and commitment of drug addicts.
- 3196. Delivery of drug addict to institution.
- 3197. Payment of costs.
- 3198. Report of information concerning drug users.
- 3199. Revocation of professional license on proof that licensee is drug user.
- 3200. Regulation of possession or control of drugs.
- 3201. "Person" defined.
- 3202. Penalties for violations.
- 3202.1. Unlawful to dispense mescal button.
- 3202.2. Penalty for violation.
- 3202.3. Unlawful to possess or dispose of mariahuana.
- 3202.4. Permitting growing, possession or sale of mariahuana unlawful.
- 3202.5. Druggists, physicians and surgeons may furnish mariahuana, when.
- 3202.6. Penalty for violations.
- 3202.7. Drug dealers' license.
- 3202.8. Application for license—construction of act.
- 3202.9. License fee.
- 3202.10. Attorney general to be attorney for state board of pharmacy—secretary to assist in enforcement.
- 3202.11. Display of license required.
- 3202.12. Disposition of fees and fines.
- 3202.13. Repealing clause—construction of act.

3170. Drugs to be sold by registered pharmacists. It shall hereafter be unlawful for any person other than a registered pharmacist, as hereinafter defined, to retail, vend, compound, or dispense drugs, medicines, poisons, chemicals, or pharmaceutical preparations, in the state of Montana, or to institute, conduct, or manage a store, shop, pharmacy, or institution for the selling, vending, compounding, or dispensing of drugs, medicines, poisons, chemicals, or pharmaceutical preparations in the state of Montana, unless such be a registered pharmacist as in this act provided, or unless a registered pharmacist is placed in charge of such store, pharmacy, shop, or institution for the retailing, vending, compounding, or dispensing of drugs, medicines, poisons, chemicals, and pharmaceutical preparations.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R. C. M. 1921.

Police Regulation

The practice of pharmacy is a proper subject for police regulation. Johnson v. City of Great Falls, 38 M 369, 373, 99 P 1059.

3171. Registered pharmacists defined—fee for registration. Registered pharmacists, within the meaning of this act, shall comprise all persons who shall, at the time of the passing of this act, hold certificates of registration granted by the state board of pharmacy of the state of Montana, or persons who shall be granted certificates of registration by the said board of pharmacy after the passage of this act, either by examination or reciprocity, as hereinafter provided; fees for registration, under this act, shall be fifteen dollars for an examination, and twenty-five dollars for reciprocity; said fees, thus collected, are to be paid to the state board of pharmacy of the state of Montana.

History: En. Sec. 641, Pol. C. 1895; re-en. Sec. 1623, Rev. C. 1907; re-en. Sec. 2, Ch. 134, L. 1915; re-en. Sec. 3171, R. C. M. 1921.

3172. Assistant pharmacists. Assistant pharmacists, in the meaning of this act, shall comprise all persons over eighteen years of age, having had at least one year's practical experience in the compounding and dispensing of physician's prescriptions, and who shall pass such examination as the state board of pharmacy of the state of Montana shall require, and pay to the state board of pharmacy a fee of five dollars. Assistant pharmacists shall not be permitted, under this act, to institute, conduct, or manage, on their own account, or to assume the management for others of any pharmacy, store, shop, or institution for the retailing, vending, compounding, or dispensing of drugs, medicines, poisons, chemicals, or pharmaceutical preparations, and are to be governed by the rules of the state board of pharmacy of the state of Montana.

History: En. Sec. 642, Pol. C. 1895; re-en. Sec. 1624, Rev. C. 1907; re-en. Sec. 3, Ch. 134, L. 1915; re-en. Sec. 3172, R. C. M. 1921.

3173. State board of pharmacy—appointment and term of office—vacancies. Immediately upon the passage of this act, the Montana state pharmaceutical association shall submit to the governor of the state of Montana the names of five registered pharmacists having had at least ten years' practical experience as dispensing pharmacists; provided, however, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists of less than ten years' practical experience who are graduates in pharmacy; and from this number the governor shall appoint three, at least one of whom shall be a graduate in pharmacy, and the said three registered pharmacists shall constitute the state board of pharmacy of the state of Montana, to have and to hold office for one, two, and three years respectively, as designated in their appointments, or until their successors have been duly appointed and qualified.

Annually thereafter the Montana state pharmaceutical association shall elect five registered pharmacists having ten years' practical experience as dispensing pharmacists; provided, however, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists of less than ten years' experience who are graduates in pharmacy. And the governor shall appoint one registered pharmacist from this number to fill the vacancies annually occurring on the board. The term of office shall be three years, or until his successor shall be appointed and qualified. In case of resignation or removal of any member of the said board, or a vacancy occurring from any cause, the governor shall immediately appoint from the remaining selections of the Montana state pharmaceutical association a registered pharmacist to serve as a member of the board for the remainder of the unexpired term; provided, however, that the said board shall always contain at least one graduate in pharmacy.

History: En. Sec. 643, Pol. C. 1895; re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. 4, Ch. 134, L. 1915; re-en. Sec. 3173, R. C. M. 1921.

3174. Organization of board—officers—examination of applicants. The said board of pharmacy shall, within thirty days after its appointment, meet in the city of Helena, and organize by the selection of a president, secretary, and treasurer, who shall serve for a term of one year and who shall perform the duties prescribed by the said board; said secretary,

thus appointed, shall not be a member of the state board of pharmacy, but shall be a member of the Montana state pharmaceutical association in good standing, and shall perform the duties as prescribed by the board. Meetings for the examination of applicants for registration, granting of certificates, and such other business as is necessary, shall be held not to exceed twice in any one year, and at such times and places as may be fixed by the said board; provided, that thirty days' notice in writing to all applicants and to all registered pharmacists of the state of the time and place of each meeting at which there is to be a meeting for an examination of candidates for registration shall be given. It shall be the duty of the board to receive all applications for examination and registration submitted in proper form, and to grant certificates to such persons as may be entitled to the same under this act; to cause the prosecution of all persons violating any of the provisions of this act; to report annually to the governor and to the state pharmaceutical association upon the condition of pharmacy in the state of Montana, which report shall also furnish a record of the proceedings of the board, as well as the names of all persons registered under this act; on what grounds and under what particular section of this act each person was registered, and any other facts pertaining to the granting of certificate, including financial report.

The board shall have power to make by-laws for the full and proper execution of its duties under this act; to prescribe the forms and methods of application, examination, and registration; to demand and receive from applicants the fees herein provided, which shall be held by the said board and applied to the payment of salaries and other necessary expenses incident to the full discharge of its duties.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R. C. M. 1921.

3175. Salaries and expenses of officers. The salaries of the said board shall be five dollars to each member for each day of actual service, and all legitimate expenses incurred in the discharge of his official duties. The secretary of the board shall receive such salary as may be fixed by the said board, which shall not exceed six hundred dollars per annum, and all of his legitimate expenses incurred in the discharge of his official duties; he shall pay to the treasurer of the state board of pharmacy, at each regular meeting of the state board of pharmacy, or whenever the state board of pharmacy may direct, all funds, which are or may come into his possession by virtue of his office as such secretary, and take the said treasurer's receipt therefor; said funds shall be paid out for such purposes only as the state board of pharmacy may direct, and only by warrant on said fund on an order drawn by the secretary and countersigned by the president of the state board of pharmacy; provided, that no salaries or expense of the board shall be paid out of the state treasury.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R. C. M. 1921.

3176. Application for registration—fees and certificate. Every person seeking registration under this act, whose registration is not otherwise provided for, shall make application, in form and manner prescribed

by the board, and deposit with the secretary of the board a fee of fifteen dollars; then, on presenting himself at the time and place directed by the board, and sustaining a satisfactory examination, he shall be granted an appropriate certificate, setting forth his particular qualifications; provided, that in case of failure of an applicant to pass a satisfactory examination, he will be entitled to a second examination, without charge, at the next succeeding meeting of the board.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R. C. M. 1921.

3177. Annual renewal of registration—fees. Every registered pharmacist and every assistant pharmacist, within the meaning of this act, who desires to continue in the pursuit of pharmacy in this state, shall annually, after the expiration of the first year of registration, and on or before the second day of July of each year, and after having been notified by the secretary of the state board of pharmacy, pay to the secretary of the state board of pharmacy a renewal fee of three dollars, one dollar of which shall be paid to the Montana state pharmaceutical association, in return for which a renewal of registration shall be issued. If a person neglect or fail to procure his annual registration as specified, notice of such failure having been mailed to his postoffice address by the secretary of the state board of pharmacy, as obtained from the books of the secretary, he shall, after the expiration of thirty days, following the issue of the said notice, be deprived of all of the privileges conferred by this act, and after six months he shall be deprived of his registration, and it shall be necessary for such person to make application and pass an examination as provided in the preceding section.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921.

3178. Certificate—contents and display. Every person registered under this act shall receive from the state board of pharmacy an appropriate certificate, not exceeding in size three hundred and twenty square inches, which shall be conspicuously displayed at all times in his place of business.

If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

History: En. Sec. 648, Pol. C. 1895; re-en. Sec. 1630, Rev. C. 1907; re-en. Sec. 9, Ch. 134, L. 1915; re-en. Sec. 3178, R. C. M. 1921.

3179. Violation of act a misdemeanor. Any person who is not a registered pharmacist, within the meaning of this act, who shall conduct, manage, or keep, either for himself or others, a pharmacy, store, shop, or institution for the retailing, dispensing, compounding, or vending of drugs, medicines, poisons, chemicals, or pharmaceutical preparations, and who shall not have in his employ a registered pharmacist, within the meaning of this act, shall be guilty of a misdemeanor, and upon conviction pay a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars.

History: En. Sec. 649, Pol. C. 1895; re-en. Sec. 1631, Rev. C. 1907; re-en. Sec. 10, Ch. 134, L. 1915; re-en. Sec. 3179, R. C. M. 1921.

3180. Wrongful exhibition of certificate of registration. Any person who shall unlawfully and without authority under this act, take, use, or

exhibit the title of a registered pharmacist or an assistant pharmacist in the state of Montana, shall be liable to a fine of not less than fifty dollars, nor more than two hundred and fifty dollars, for each and every offense. A like penalty shall attach to any assistant pharmacist who shall, without authority, take, use, or exhibit the title of registered pharmacist in the state of Montana.

History: En. Sec. 650, Pol. C. 1895; re-en. Sec. 1632, Rev. C. 1907; re-en. Sec. 11, Ch. 134, L. 1915; re-en. Sec. 3180, R. C. M. 1921.

3181. Compounding of drugs by persons other than registered pharmacists—sale of patent medicines. Any proprietor of a pharmacy, or any other person who shall permit the compounding or dispensing of physicians' prescriptions, or the vending of drugs, medicines, poisons, chemicals, or pharmaceutical preparations in his store or place of business, except by a registered pharmacist, in the meaning of this act, or under the immediate supervision of a registered pharmacist, or who, while continuing in the pursuit of pharmacy in the state of Montana, shall fail or neglect to procure his annual registration, or any person who shall wilfully make any false representations to procure for himself, or for another, registration under this act, or who shall violate any provisions of this act, shall, for each and every offense, be liable to a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars; provided, that nothing in this act shall interfere with the keeping, distributing, or handling of drugs, acids, or poisons by merchants or corporations, for use in their business, when kept in original and plainly labeled packages; provided, also, that nothing in this act shall interfere with any physician in his regular practice, nor with the wholesale business of any dealers, nor with the business of merchants in towns where there is no regularly licensed pharmacist when selling drugs, medicines, pharmaceutical, or proprietary medicinal preparations in original and plainly labeled packages as the public may require; provided, also, that nothing herein shall be construed to prevent the sale of any patent or proprietary medicine in the original package, when plainly labeled, nor such non-medicinal articles as are usually sold by general merchants.

History: En. Sec. 651, Pol. C. 1895; re-en. Sec. 1633, Rev. C. 1907; re-en. Sec. 12, Ch. 134, L. 1915; re-en. Sec. 3181, R. C. M. 1921.

3182. Official preparations must be carried for sale for compounding drugs. Every person who shall keep a pharmacy, store, shop, or institution for the compounding or dispensing of physicians' prescriptions, or for the sale of drugs, medicines, chemicals, or pharmaceutical preparations, must carry the official preparations of the United States pharmacopoeia and the national formulary, and dispense the same.

The preparations carried in stock, made or dispensed by such person, where the same are covered by the United States pharmacopoeia or the national formulary, shall conform to the United States pharmacopoeia and the national formulary.

History: En. Sec. 13, Ch. 134, L. 1915; re-en. Sec. 3182, R. C. M. 1921.

3183. Registration of pharmacists without examination—reciprocity. Any pharmacist having had four years' practical experience as a dispens-

ing druggist, upon the payment of a fee of twenty-five dollars to the secretary of the state board of pharmacy, may be registered without examination under such rules as may be provided by the state board of pharmacy; provided further, that such pharmacist be and is registered in some state whose standard of requirements of examination shall be fully equal to the standard of requirements of the state of Montana, and provided that such other state will also register pharmacists duly and regularly licensed in the state of Montana.

History: En. Sec. 14, Ch. 134, L. 1915; re-en. Sec. 3183, R. C. M. 1921.

3184. Adulterated drugs. The proprietors of all pharmacies will be held responsible for the quality of all drugs, medicines, and chemicals sold or dispensed at their respective places of business, except patent and proprietary preparations, and articles sold in the original packages of the manufacturer. Any person who shall wilfully adulterate or alter, or cause or permit to be adulterated or altered, any drug, medicine, or pharmaceutical preparation, or shall sell or offer for sale any such adulterated or altered article, and any person who shall substitute, or cause to be substituted, one material for another, with the intention to defraud or deceive the purchaser, shall be guilty of a misdemeanor and liable to a prosecution therefor. All penalties collected for such violation shall be paid into the county treasurer of the county wherein such conviction may be had for the benefit of the school fund of such county.

History: En. Sec. 652, Pol. C. 1895; re-en. Sec. 1634, Rev. C. 1907; re-en. Sec. 3184, R. C. M. 1921.

3185. Sale of poisons regulated. It shall be unlawful for any person, from and after the passage of this act, to retail any of the following named poisons, to-wit: Arsenic and its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and all poisonous vegetable alkaloids and their salts, the essential oil of almonds; opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce; aconite, belladonna, colchicum, conium, nux-vomica, digitalis, and their pharmaceutical preparations; croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid, oxalic acid; wood alcohol; without labeling the box, bottle, vessel, paper or package in which said poison is contained, with the name of the article, and the word "poison," and the name and place of business of the seller. Also, each label of such poison shall contain a concise statement of the principal antidotes for the poison so labeled. The label hereby required to be placed upon wood alcohol shall contain the following: "Warning. The fumes of wood alcohol burned in a close room, if inhaled, are injurious to eyesight, often producing total blindness." Nor shall it be lawful for any person to deliver or sell any poisons enumerated above, unless upon due inquiry it be found that the purchaser is aware of its poisonous character, and represents that it be used for a legitimate purpose. The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses upon the prescription of practitioners of medicine. Any person or persons violating the provisions of this section shall be deemed

guilty of a misdemeanor; provided, however, that this section shall not apply to manufacturers making and selling at wholesale any of the above poisons, and provided that each bottle, box, vessel, paper, or package in which said poison is contained shall be labeled with the name of the article, the word "poison," and the name and place of business of the seller.

History: En. Sec. 1, Ch. 156, L. 1907; Sec. 1636, Rev. C. 1907; re-en. Sec. 3185, R. C. M. 1921.

3185.1. Poison register to be kept by pharmacists may be required by state board of pharmacy. The Montana state board of pharmacy may by a rule or rules adopted by said board, require every registered pharmacist to keep a poison register which may require a record of all poisons sold or disposed of, the signature of the purchaser and such other information in relation thereto as may be required by said board and said board may provide by rule what are to be deemed poisons within the terms of this law and the rule or rules adopted.

History: En. Sec. 1, Ch. 11, L. 1935.

3185.2. Revocation of license for failure to keep record or falsifying. In the event any pharmacist shall sell or dispose of any such poison without keeping a record of same, or shall keep any false record thereof, or shall permit the sale or disposal of same without keeping such record, or shall otherwise violate the rule or rules so promulgated by the Montana state board of pharmacy, such board may, upon notice and after a hearing, revoke the license of such pharmacist for any violation of said rule.

History: En. Sec. 2, Ch. 11, L. 1935.

3185.3. Sale of poison without keeping register constitutes misdemeanor. The sale or disposal of any poison by any registered pharmacist without keeping a record thereof in a poison register, shall constitute a misdemeanor.

History: En. Sec. 3, Ch. 11, L. 1935.

3186. Repealed—Court decision in State v. Brennan, 89 M 479, 300 P 273.

3187. Restrictions upon sale or prescription of opiates. It shall be unlawful for any physician to sell, or give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture or preparation of any of them, except to a patient believed in good faith to require the same for medical use, and in quantities proportioned to the needs of such patients.

History: En. Sec. 2, Ch. 11, L. 1911;
re-en. Sec. 3187, R. C. M. 1921.

References
State v. Brennan, 89 M 479, 482, 300
P 273.

3188. Penalty for violation of act. Any person found guilty of the violation of this act shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than sixty days nor more than one hundred days, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911;
re-en. Sec. 3188, R. C. M. 1921.

References

State v. Wong Fong, 75 M 81, 84, 241 P 1072; State v. Brennan, 89 M 479, 482, 300 P 273.

3189. Regulation of sale of opium and other narcotics. It shall be unlawful for any person to sell, barter, exchange, distribute, give away, or in any manner dispose of, at retail, or to a consumer, opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, within this state, except upon the original written prescription of a duly licensed physician, duly licensed to practice medicine in Montana, and pursuant to all the requirements of this act; provided, that nothing in this act shall be construed as preventing a dentist or veterinary surgeon, duly licensed to practice in Montana, from obtaining, on federal government permits, for use in his practice, the drugs or narcotics mentioned in this section.

History: En. Sec. 1, Ch. 202, L. 1921;
re-en. Sec. 3189, R. C. M. 1921.

Constitutionality

Held, that the intent of the legislature to prohibit the possession and use of narcotics under certain conditions is sufficiently expressed in the title of chapter 202, laws of 1921 (secs. 3189-3202, R. C. M. 1921). State v. Mark, 69 M 18, 22, 220 P 94.

Controlling Statute

Held, that this section, enacted in 1921 as section 1, chapter 202, laws of 1921, prohibiting the sale, inter alia, of coca leaves or a derivative thereof, supersedes section 3186, R. C. M. 1921, enacted in 1895, so far as it comprehends or conflicts with the subject matter of the two latter sections, and that the trial court's holding that an information charging the unlawful sale "of cocaine, a derivative of coca leaves" was based upon this section was correct. State v. Wong Fong, 75 M 81, 83, 241 P 1072.

Held, in a prosecution for unlawful sale of morphine hydrochloride, that this section, enumerating the drugs a sale of which shall be unlawful except as therein provided, impliedly repealed section 3186, R. C. M. 1921, dealing with the same subject and is now controlling, as is section 3202, R. C. M. 1921, as amended by Ch. 38, L. 1925, declaring a violation of the act a felony instead of a misdemeanor as theretofore under section 3188, R. C. M. 1921. State v. Brennan, 89 M 479, 481, 300 P 273.

Information

An information must charge the crime alleged to have been committed, with certainty and precision, setting forth all the affirmative facts which constitute a prima facie case under the statute charged to have been violated. State v. Hem, 69 M 57, 59, 200 P 80.

Id. Under the above rule, held that an information charging a violation of the narcotic law (this section) was insufficient for failure to state the name of the purchaser of the drug and that the sale was made at retail or to a consumer.

In the prosecution for the illegal sale of morphine under this section, the information need not contain the negative averment that the drug was not sold upon prescription; if it does contain such an allegation it is surplusage, rendering proof thereof unnecessary, the fact that it was so sold being a matter of defense. State v. Finley, 72 M 42, 45, 231 P 390.

An information charging unlawful sale of narcotics need not negative any of the exceptions mentioned in this section, the burden resting upon the person accused to show, as a matter of defense, that he comes within any one of them. State v. Brennan, 89 M 479, 481, 300 P 273.

References

State v. Toy, 65 M 230, 211 P 303; State v. Kim, 69 M 64, 220 P 81; State v. Mun, 76 M 278, 280, 246 P 257; State v. Vallie, 82 M 456, 460, 461, 268 P 493; State v. Mah Sam Hing, 89 M 178, 181, 295 P 1014.

3190. Remedies excepted from act. The provisions of this act shall not be construed to apply to the sale, barter, exchange, distribution, giving away, dispensing, or the disposition in any manner, or the possession, within this state of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one

grain of codeine, or any salt or derivative of any of them in one fluid ounce; or, if a solid or semi-solid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, or to decocanized coca leaves or preparations made therefrom, or to other preparations of coca leaves, which do not contain cocaine; provided, that such remedies and preparations are sold, distributed, given away, disposed, or possessed as medicine and not for the purpose of evading the intendment and provisions of this act, except this act shall apply to liniments, ointments, and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts or any synthetic substitute for them.

History: En. Sec. 2, Ch. 202, L. 1921; re-en. Sec. 3190, R. C. M. 1921.

Failure to Negative Exception

Under the rule that an indictment or information need not negative an exception contained in the statute under which the prosecution is had, unless the exception is necessary to a complete definition of the offense sought to be charged, held that an information charging unlawful possession of opium was sufficient as against the objection that the failure of the pleader to negative the exception con-

tained in this section providing that the act should not apply to the possession of preparations and remedies which do not contain more than two grains of opium to the ounce, rendered it insufficient to charge a public offense. *State v. Mun*, 76 M 278, 280, 246 P 257.

References

State v. Mark, 68 M 18, 22, 220 P 94; *State v. Mah Sam Hing*, 89 M 178, 181, 295 P 1014; *State v. Brennan*, 89 M 479, 482, 300 P 273.

3191. Filling of prescriptions. The original written prescription required by the provisions of section 3189 of this code shall be signed in full by the duly licensed physician duly licensed to practice medicine in Montana, or by a veterinary surgeon duly licensed to practice in Montana, issuing it and dated as of the day on which so signed, and shall also indicate the office address and office hours of such duly licensed physician duly licensed to practice medicine in Montana, and the name and address of the person to whom such written prescription is issued, and when prescribed by a duly licensed veterinary surgeon, shall indicate in addition the kind of animal for the treatment of which such written prescription is issued and the name and address of the owner thereof. No written prescription containing more than four grains of morphine, thirty grains of opium, two grains of heroin, six grains of codeine, or five grains of cocaine shall be filled unless the due issuance and correctness thereof be first verified. No written prescription shall be filled without sufficient verification, if, for any reason, the proper issuance and presentation thereof appears questionable. Such written prescription shall be exactly filled as soon as received, or as soon thereafter as practicable, but no such written prescription shall be filled more than ten days subsequent to the issuance date which said written prescription bears. The person filling such prescription shall write or indicate thereon the date of filling and the date when and the name and address of the person to whom he delivers the drugs so prescribed. Such written prescription shall be filled but once and shall not be copied, except for the purpose of record by the duly licensed physician, duly licensed to practice medicine in Montana, or by the person filling it, and shall be preserved on file, receiving a consecutive file number, by the person filing it, for a period of two years from the date on which such pre-

scription is filled, in such a way as to be readily accessible to the officers, agents, employees and officials mentioned in this act.

History: En. Sec. 3, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3191, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
295 P 1014; State v. Brennan, 89 M 479,

References

State v. Mark, 68 M 18, 22, 220 P 94; 482, 300 P 273.

3192. Use of opiates by physicians, veterinary surgeons and dentists.

A duly licensed physician or veterinary surgeon duly licensed to practice medicine in Montana may prescribe, dispense, distribute or administer, and a duly licensed dentist duly licensed to practice in Montana, may administer, within this state, to his patient any of the drugs mentioned in this act, providing such dispensing, distribution, or administering is made in good faith and in the course of his professional practice for medicinal purposes only; provided, further, that such duly licensed physician, duly licensed to practice medicine in Montana, dentist or veterinary surgeon shall keep a record of all such drugs so dispensed, distributed, or administered, showing in each instance the amount so dispensed, distributed, or administered, the date when and the name and address of the patient to whom such drugs are so dispensed, distributed, or administered, except such drugs as may be dispensed, distributed, or administered to a patient upon whom such duly licensed physician duly licensed to practice medicine in Montana, dentist or veterinary surgeon shall personally attend in emergency; and such record shall be kept for a period of two years from the date of dispensing, distributing, or administering such drugs, subject to the inspection provided for in this act. It shall be unlawful for any licensed veterinary surgeon to dispense, distribute, or administer any of the drugs mentioned in this act for the treatment of or consumption by a human being. It shall be unlawful, except as provided for in this act, for a duly licensed physician, duly licensed to practice medicine in Montana, to prescribe, dispense, distribute, or administer, and for a duly licensed dentist or veterinary surgeon to administer the drugs mentioned in this act.

The words "good faith," as mentioned, shall be interpreted to mean that where a duly licensed physician, duly licensed to practice medicine in Montana, dentist or veterinary surgeon shall prescribe, dispense, distribute, administer, or in any manner give opium or coca leaves, or any compound manufacture, salt, derivative, or preparation thereof, it shall be for the actual relief or treatment of disease or surgical operation, but if such prescribing, dispensing, distribution, administering, or giving of such drugs is not being issued for relief in the treatment of disease or surgical operation, and such drugs are being used for the purpose of providing the drug addict with the aforesaid drug or drugs sufficient to keep him comfortable, it shall be considered as a perversion of the meaning of the words "good faith" as above contained. The prescribing for, dispensing, administering, or giving of such drugs to an addict for self-administration by such patient shall not be deemed to constitute in itself legitimate medical treatment.

History: En. Sec. 4, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3192, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
295 P 1014; State v. Brennan, 89 M 479,

References

State v. Mark, 68 M 18, 22, 220 P 94; 482, 300 P 273.

3193. Officers charged with administration of act—secrecy of record.

The state board of health of Montana, through its duly authorized officers, agents, or employees and all officers, agents, and employees of any organized municipalities within this state, who are charged with the enforcement of state laws and city ordinances, are hereby charged with the enforcement of this act, and, also, the officers, agents, and employees of the United States treasury department duly authorized to make inspections under the act of Congress approved December 17, 1914, entitled, "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes," are empowered to inspect any and all of the records required to be kept by any person under the provisions of this act. All records provided for in this act shall be inaccessible to the public, and any officer, agent, or employee mentioned above who shall disclose or use the information contained in said records, except as herein expressly provided for and except for the purpose of enforcing the provisions of this act or said act of Congress, for the purpose of enforcing any ordinance of any organized municipality within this state, regulating the sale, prescribing for, dispensing, dealing in, or distribution of the aforesaid drugs, and except in the public interest unless directed by the court, shall, on conviction, be fined or imprisoned as provided by section 3202 of this code.

History: En. Sec. 5, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3193, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,

References

State v. Mark, 68 M 18, 22, 220 P 94;

295 P 1014; State v. Brennan, 89 M 479, 482, 300 P 273.

3194. Physicians to report prescriptions issued to drug addicts. A duly licensed physician duly licensed to practice medicine in Montana, who prescribes for, dispenses, administers, or in any manner gives any of the drugs mentioned in this act, to a person known to him or believed by him to be an habitual user or a drug addict, shall, within forty-eight hours, report to the county attorney of the county in which said physician prescribes for, dispenses, administers, or in any manner gives any of the drugs mentioned in this act, the name, address, physical and mental condition, and any necessary substantial information regarding such person. "An habitual user of such drugs" or "drug addict" is defined as follows: "Any person who has needed or demanded the prescribing for, dispensing or administering, or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds, at more or less regular intervals for thirty consecutive days prior to the day such person applies to a physician or to a physician of any institution for the prescribing for, dispensing, administering, or the giving in any way of any such drugs or their derivatives." If a physician shall prescribe for, dispense, administer, or in any manner give any of the drugs mentioned in this act, daily for more than thirty days to a patient, such physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person, and a prognosis as to the probable future necessity for

continuing the prescribing, dispensing, administering, or the giving of such drugs to such patient, and such prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such patient. It shall be the duty of the county attorney upon receipt of such notice to immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

History: En. Sec. 6, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3194, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
295 P 1014; State v. Brennan, 89 M 479,
482, 300 P 273.

References

State v. Mark, 68 M 18, 22, 220 P 94;

3195. Arrest and commitment of drug addicts. Whenever a complaint shall be made to any judge of the district court that any person is addicted to the use of drugs mentioned in this act in a manner contrary to the public welfare, such judge of the district court must issue and deliver to some peace officer for service a warrant of arrest, directing that such person be arrested and brought before said judge for examination, and if, after said examination, said judge is satisfied that said person is addicted to the use of the drugs mentioned in this act, in a manner contrary to the public welfare, he may commit such person to a state, county, city, or other hospital or institution where facilities are provided for the treatment of drugs addicts. Whenever it is made to appear to the judge of the district court that such person is no longer addicted to the use of the aforesaid drugs in a manner contrary to the public welfare, or at any other time in his discretion, he may order a discharge from such commitment. The provisions of this act shall not be construed to prohibit any person committed to any institution under its provisions from appealing for a review of the sufficiency of the evidence upon which the commitment was made.

History: En. Sec. 7, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3195, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
295 P 1014; State v. Brennan, 89 M 479,
482, 300 P 273.

References

State v. Mark, 68 M 18, 22, 220 P 94;

3196. Delivery of drug addict to institution. The person so committed, together with a copy of the order of the judge committing him, must be delivered by the sheriff of the county to the person in charge of the hospital or institution to which said person is committed.

History: En. Sec. 8, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3196, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
295 P 1014; State v. Brennan, 89 M 479,
482, 300 P 273.

References

State v. Mark, 68 M 18, 22, 220 P 94;

3197. Payment of costs. All costs and expenses incurred in the arrest, examination, commitment, and maintenance of such person shall be paid in the manner now provided for by law for the arrest, examination, commitment, and maintenance of persons committed to the state insane asylum.

History: En. Sec. 9, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3197, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
295 P 1014; State v. Brennan, 89 M 479,
482, 300 P 273.

References

State v. Mark, 68 M 18, 22, 220 P 94;

3198. Report of information concerning drug users. It is hereby made the duty of police judges and magistrates, judges of municipal courts and

justices of the peace to report immediately to the county attorney of the county wherein their said courts are established and conducted, any and all knowledge or information acquired or obtained by said police judge, magistrate, judges of municipal courts, and justices of the peace, in a trial of causes or hearings before them, which knowledge or information shows, or tends to show, that any person is a drug user or drug addict. If said person so shown to be a drug user or drug addict is under arrest or liberated on bail at the time said knowledge or information is acquired or obtained by said police judge or magistrate, judge of a municipal court, or justice of the peace, said person shall not be liberated, if under arrest, nor said bail discharged by said judge, magistrate, or justice of the peace until said report is made to the county attorney, as provided herein.

History: En. Sec. 10, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3198, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
References 295 P 1014; State v. Brennan, 89 M 479,
 State v. Mark, 68 M 18, 22, 220 P 94; 482, 300 P 273.

3199. Revocation of professional license on proof that licensee is drug user. The regularly established and constituted board, commission, or authority of this state, duly empowered to issue a license to a physician, dentist, veterinary surgeon, pharmacist, or nurse, authorizing the practice of his profession in this state, shall, at any time, and after a fair hearing held upon reasonable notice, revoke such license upon the production of sufficient evidence that the licensee is addicted to the use of the drugs mentioned in this act in a manner contrary to the public welfare. Whenever it shall appear that such physician, dentist, veterinary surgeon, pharmacist, or nurse is no longer addicted to the use of the aforesaid drugs in a manner contrary to the public welfare, they may reissue said license; that a duly licensed physician, duly licensed to practice medicine in Montana, dentist, veterinary surgeon, pharmacist, or nurse duly convicted of a substantial violation of this act shall be liable to a revocation of this license by the regularly constituted and established board, commission, or authority of this state, duly empowered to issue such license, after a fair hearing upon a reasonable notice, provided such revocation shall be in the public interest.

History: En. Sec. 11, Ch. 202, L. 1921; State v. Mun, 76 M 278, 280, 246 P 257;
re-en. Sec. 3199, R. C. M. 1921. State v. Mah Sam Hing, 89 M 178, 181,
References 295 P 1014; State v. Brennan, 89 M 479,
 State v. Mark, 68 M 18, 22, 220 P 94; 482, 300 P 273.

3200. Regulation of possession or control of drugs. It shall be unlawful for any person to have in his possession or under his control any of the drugs mentioned in this act, if such possession or control is obtained in a manner contrary to the provisions of this act; and such possession or control shall be presumptive evidence of a violation of this act; provided, that this section shall not apply to the possession or control of the aforesaid drugs by any employee or agent, acting within the scope of his employment or agency, or any person dealing in such drugs pursuant to all the requirements of this act, and such possession or control does not operate any of the provisions or the intendment of this act; or to the possession or control by a nurse for medicinal treatment only, and not on

his own account, acting under the supervision and direction of a duly licensed physician, duly licensed to practice medicine in Montana, or by a dentist or veterinary surgeon engaged in the legitimate practice of his profession; or to the possession and control of the aforesaid drugs by any United States, state, county, municipal, or other duly authorized public officer or official who has such possession or control by reason of his official duties; or to the possession or control of the aforesaid drugs by a warehouseman or a common carrier holding such possession or control under the direction of a person who has received such drugs pursuant to the requirements of this act; nor to persons conducting wholesale or retail drug establishments who are registered by the commissioner of internal revenue under and pursuant to the provisions of an act of Congress approved December 17, 1914, being an act entitled: "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes"; provided, further that it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, or indictment, or other writ or proceeding laid or brought under this act, and the burden of proof of any such exemption shall be upon the defendant.

History: En. Sec. 12, Ch. 202, L. 1921; re-en. Sec. 3200, R. C. M. 1921.

Enumeration of Drugs

Held, in a prosecution for the unlawful possession of a prohibited drug (hydrochloride cocaine) brought under this section, that the drugs referred to herein by the phrase "any of the drugs mentioned in this act," are those set forth in chapter 5, laws of 1929, amendatory of section 3186, R. C. M. 1921, theretofore amended, and that, while hydrochloride cocaine is not in terms mentioned therein, it is a derivative of alkaloid cocaine specifically enumerated and as such proscribed by said chapter. *State v. Mah Sam Hing*, 89 M 178, 181, 295 P 1014.

Information

Under this section, the information in a prosecution for unlawfully selling narcotics need not negative any of the exceptions named in the act, among them that the sale was not made upon an original prescription given by a duly licensed physician, the burden of proving any of the exceptions being upon defendant. *State v. Vallie*, 82 M 456, 461, 268 P 493.

The information in a prosecution under this section charged the unlawful possession of alkaloid cocaine and cocaine. During the trial the court of its own motion ordered the pleading amended to conform to the proof by substituting the words "cocaine hydrochloride." Held, in answer to the contention that by the amendment a charge different from that origin-

ally filed had been substituted, that cocaine hydrochloride is derived from alkaloid cocaine and indirectly from coca leaves, and therefore falls within the prohibition of chapter 5, laws of 1929, embracing any derivative of the drugs mentioned therein, among which is alkaloid cocaine, and that therefore defendant was not prejudiced by the amendment, especially where he denied the possession of any prohibited drug. *State v. Mah Sam Hing*, 89 M 179, 181, 295 P 1014.

Possession Presumptive Evidence

Under this section, it is unlawful for any person (other than those permitted by the act to have lawful possession of them) to have in his possession any of the drugs mentioned therein, and the possession or control of any such drugs shall be presumptive evidence that the drug is possessed or controlled in violation of the law; hence the contention that the presumption of guilt from possession does not arise until it be first proved that the possession was obtained contrary to the provisions of the act is without merit. (*Dic-tum* in *State v. Mark*, 69 M 18, to the contrary, disapproved.) *State v. Mun*, 76 M 278, 280, 246 P 257.

Under this section, the mere possession of narcotics is *prima facie* evidence of guilt and therefore lack of knowledge, on the part of the recipient of a package through the mails, that it contained morphine did not render her arrest unlawful, her lack in that respect being a matter of defense at the trial. *State v. District*

Court et al., 82 M 515, 519 et seq., 268 P 501.

References

State v. Mark, 69 M 18, 22, 220 P 94;

State v. Finley, 72 M 42, 47, 231 P 390;
State v. Kennedy, 82 M 165, 166, 266 P 386; State v. Brennan, 89 M 479, 482, 300 P 273.

3201. "Person" defined. The word "person" as used in this act shall be construed to mean and include the partnership, firm, association, company, or corporation, as well as a natural person.

History: En. Sec. 14, Ch. 202, L. 1921;
re-en. Sec. 3201, R. C. M. 1921.

References

State v. Mark, 68 M 18, 22, 220 P 94;

State v. Mun, 76 M 278, 280, 246 P 257;
State v. Mah Sam Hing, 89 M 178, 181, 295 P 1014; State v. Brennan, 89 M 479, 482, 300 P 273.

3202. Penalties for violations. Any person, either principal or agent except such persons as are duly authorized by law, having possession or control of any drug mentioned in sections 3189 to 3201, both inclusive, shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500.00), nor more than three thousand dollars (\$3000.00), and by imprisonment in the state prison for not less than one year, nor more than five years.

Any person, either principal or agent, who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs mentioned in sections above designated to a person over the age of eighteen (18) years, contrary to the provisions of said sections, shall upon conviction, be punished by a fine of not less than one thousand (\$1000.00), nor more than three thousand dollars (\$3000.00), and by imprisonment in the state prison for not less than five (5) years; nor more than ten (10) years.

Any person, either principal or agent, who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs mentioned in the sections above designated, contrary to the provisions of said sections, to any person of the age of eighteen (18) years, or under, shall upon conviction be punished by imprisonment in the state prison for not less than five years nor more than life.

History: En. Sec. 15, Ch. 202, L. 1921;
re-en. Sec. 3202, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1923; amd. Sec. 1, Ch. 38, L. 1925.

Controlling Statute

Held, in a prosecution for unlawful sale of morphine hydrochloride, that section 3189, R. C. M. 1921, enumerating the drugs a sale of which shall be unlawful except as therein provided, impliedly repealed section 3186, R. C. M. 1921, dealing with the same subject, and is now controlling, as is this section, declaring a violation of the act a felony instead of a misdemeanor as theretofore under section 3188, R. C. M. 1921. State v. Brennan, 89 M 479, 482, 300 P 273.

Not Necessary to Plead Age

While this section prescribes a more severe punishment where an unlawful sale of narcotics is made to a person under the age of eighteen years than where the purchaser is over that age, the information need not allege the age, age having noth-

ing to do with the commission of the offense, it being a matter to be taken into consideration by the court and jury in prescribing the penalty on a conviction. State v. Brennan, 89 M 479, 482, 300 P 273.

Id. Where the age of the person to whom defendant unlawfully sold morphine did not appear from the record, but the punishment inflicted was less than the penalty prescribed for a sale to one under eighteen years of age and within the limits prescribed for a sale to one over that age (this section), his rights were not injuriously affected by an alleged defect in the information for failure to allege his age and consequent absence of proof in that respect, where the court in its instructions relative to the penalty made no mention of the more severe punishment but confined itself to the lesser provided for in a case where the purchaser is over the age of eighteen years.

Place of Imprisonment

Where, as in the act prohibiting traffic in narcotics (this section), the law does

not fix the place of imprisonment, the place is in the county jail or city prison, and therefore a judgment not prescribing where the imprisonment shall be served is not invalid. (Construed before amendment providing place of imprisonment.) *State v. Toy*, 65 M 230, 235, 211 P 303.

Where the punishment for an offense is fixed by law (as in this section) at imprisonment without stating the place of confinement, the place of imprisonment is the county jail and not the state

prison. (Construed before amendment providing place of imprisonment.) *State v. Mark*, 69 M 18, 22, 220 P 94.

References

State v. Wong Hip Chung, 74 M 523, 525, 241 P 620; *State v. Wong Fong*, 75 M 81, 83 et seq., 241 P 1072; *State v. Mun*, 76 M 278, 280, 246 P 257; *State v. Vallie*, 82 M 456, 268 P 493; *State v. District Court et al.*, 82 M 515, 519, 268 P 501; *State v. Mah Sam Hing*, 89 M 178, 181, 295 P 1014.

3202.1. Unlawful to dispense Mescal Button. That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish or give away, or have in his or its possession Peyote (*Pellote*), botanically known as *Lophophora Williamsii*; or *Agava Americana*, commonly known as the Mescal Button; or any compound, derivative, or preparation thereon.

History: En. Sec. 1, Ch. 22, L. 1923.

Operation and Effect

Held, that section 4, article III of the state constitution, guaranteeing the free exercise and enjoyment of religious profession and worship, is not in conflict with any provision of the federal constitution, and that such provision cannot be

invoked as a protection against legislation enacted by chapter 22, laws of 1923, (this section), prohibiting the unlawful possession of peyote (a narcotic), under the claim that the drug was possessed for use by members of a church to which defendant belonged, for sacramental purposes. *State v. Big Sheep*, 75 M 219, 225, 243 P 1067.

3202.2. Penalty for violation. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed five hundred (\$500.00) dollars, or imprisonment in the county jail for a period of not to exceed six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 22, L. 1923.

3202.3. Unlawful to possess or dispose of mariahuana. No person, save as in section 3202.5, shall use, possess, sell, furnish, or otherwise dispose of any mariahuana seeds or plants (also known as *cannabis sativa*, *cannabis indica*, or Indian hemp) or any derivative mixture or preparation thereof, for any purpose whatsoever.

History: En. Sec. 1, Ch. 6, L. 1929; amd. Sec. 1, Ch. 114, L. 1935.

3202.4. Permitting growing, possession or sale of mariahuana unlawful. No person shall knowingly permit any mariahuana seeds or plants (also known as *cannabis sativa*, *cannabis indica*, or Indian hemp) or any derivative, mixture, or preparation thereof to be grown, used, possessed, sold, furnished, or otherwise disposed of save as in section 3202.5, on any premises of which he is the occupant or owner in fee or as lessor or lessee, renter or otherwise.

History: En. Sec. 2, Ch. 6, L. 1929; amd. Sec. 2, Ch. 114, L. 1935.

3202.5. Druggists, physicians and surgeons may furnish mariahuana, when. Nothing herein contained shall prohibit any wholesale or retail druggist, duly licensed as such under the laws of the state of Montana, or any physician or surgeon, duly licensed under the laws of the state of Montana to practice his profession as such, from possessing mariahuana in the ordinary and the usual course of his business or profession as the case

may be; nor is any wholesale or retail druggist, regularly licensed as such under the laws of the state of Montana, prohibited hereby from selling or furnishing to such a licensed physician or surgeon, or licensed druggist, mariahuana, or any derivative, mixture or preparation thereof, in the usual and ordinary course of such druggist's business, or of the practice of the profession of any such physician or surgeon; nor is any physician or surgeon, so licensed under the laws of this state, prohibited hereby from prescribing or dispensing mariahuana, or any derivative, mixture, or preparation thereof, in good faith and in the usual and ordinary course of the practice of his profession; nor is the sale of patent or proprietary or medicinal preparations, in which mariahuana is present in qualities not greater than one-fourth grain of the solid extract to the fluid or avoirdupois ounce prohibited hereby.

History: En. Sec. 3, Ch. 6, L. 1929.

3202.6. Penalty for violations. Any violation of the provisions of this act, or any part thereof shall be a felony and any person adjudged guilty thereof shall be punished by imprisonment in the state penitentiary not less than one year and not more than five years or a fine of not less than five hundred dollars (\$500.00), or more than one thousand dollars (\$1,000.00) or by both fine and imprisonment.

History: En. Sec. 4, Ch. 6, L. 1929; amd. Sec. 3, Ch. 114, L. 1935.

3202.7. Drug dealers' license. It shall be unlawful for any person, persons, firm, or corporation to sell or vend drugs, medicines, and remedies as provided for under sections 3170 through 3202 in the state of Montana without first having a license issued under the authority of the state of Montana, provided nothing in this act shall be construed so as to interfere with any physician in his practice, nor with the wholesale business of any wholesale dealer as such, nor interfere with the distributing, keeping, or handling of drugs, acids or poisons by merchants or corporations for use in their own business when kept in the original plainly labeled package.

History: En. Sec. 1, Ch. 104, L. 1931.

3202.8. Application for license—construction of act. Applications for license shall be made to the secretary of the state board of pharmacy of the state of Montana, and shall contain such information as the board may require, which shall include the name and location of the person or persons, or corporation and business and the character of the business generally of such person, persons, firm, or corporation. Licenses within the meaning of this act shall be issued subject to the regulations of sections 3170 through 3202, by the Montana state board of pharmacy, to any place of business, firm or corporation which under sections 3170 through 3202, may sell or vend any such drugs, medicines or remedies and which have complied with this act. Provided that nothing in this act shall be in any way construed to or require a license for the sale of patent or proprietary medicines, fungicides, insecticides and germicides for agricultural or horticultural uses when sold in original packages or containers.

History: En. Sec. 2, Ch. 104, L. 1931.

3202.9. License fee. An annual fee of \$3.00 shall be required for each license. License shall be made to expire on the next 30th day of June after their issuance.

History: En. Sec. 3, Ch. 104, L. 1931.

3202.10. Attorney general to be attorney for state board of pharmacy—secretary to assist in enforcement. The attorney general of the state of Montana shall be the attorney for the Montana state board of pharmacy, and said board shall not employ any other attorney or counsel except upon the consent and approval of the attorney general. The secretary of the Montana state board of pharmacy shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general in the administration and enforcement of this act without any extra salary, provided, however, he shall upon approval of the board be allowed all legitimate expenses incurred or necessary in the discharge of the duties required of him by the board, or the attorney general.

History: En. Sec. 4, Ch. 104, L. 1931.

3202.11. Display of license required—penalty for violations. Any person, persons, firm or corporation which under this act are required to have a license, shall at all times have such license posted in a conspicuous place in their place of business, and any such person, persons, firm or corporation that fails to have such a license and have the same at all times available for inspection and examination by any person or citizen of the state of Montana, or who violates any of the provisions of this act, shall be guilty of a misdemeanor.

History: En. Sec. 5, Ch. 104, L. 1931.

3202.12. Disposition of fees and fines. All fees collected by the state board of pharmacy of the state of Montana for licenses issued under this act shall be transmitted to the state board of pharmacy as provided by law. All fines paid under the provisions of this act or in connection with the enforcement thereof shall be paid to the credit of the common school fund of the state of Montana; provided that no salaries or expenses of the board of pharmacy shall be paid out of the state treasury.

History: En. Sec. 6, Ch. 104, L. 1931.

3202.13. Repealing clause—construction of act. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that nothing in this act shall be construed as modifying any of the provisions of sections 3170 through 3202 and amendments thereof relative to the examination, registration and requirements and privileges of and for registered pharmacists in the state of Montana.

History: En. Sec. 7, Ch. 104, L. 1931.

CHAPTER 273

NURSING—REGULATION OF PRACTICE

Section 3203.	Issuance of licenses by governor to nurses.
3204.	Appointment of board of examiners for nurses.
3205.	Filling of vacancies in board.
3206.	Organization of board.
3207.	Subjects on which examination to be held.

- 3208. Duty of inspector of training schools—registration of nurses.
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- 3211.1. Renewal of certificate—fee.
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- 3213. All applicants to be examined after July, 1917.
- 3214. Unlawful to practice without certificate.
- 3215. Interpretation of act.
- 3216. Revocation of certificate.

3203. Issuance of licenses by governor to nurses. The governor of the state of Montana shall have the power, and it shall be his duty, to issue a license or certificate of registration to any person practicing the profession of nursing the sick, upon the recommendation of the board of examiners for nurses, said board to be appointed as hereinafter provided for.

History: En. Sec. 1, Ch. 50, L. 1913; re-en. Sec. 3203, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1925.

Board of Examiners

The duty imposed by this statute upon the state board of examiners for nurses to examine persons who seek registration as professional nurses, and judge of their qualifications, is quasi judicial, and its performance in any particular way cannot be compelled by mandamus. Where, however, its discretion has been abused, or arbitrarily or capriciously exercised, the writ does lie to compel a proper exercise of the powers granted. State ex rel. Marshall v. District Court, 50 M 289, 294, 146 P 743.

Mandamus does not lie to compel the state board of examiners for nurses to recommend a person to the governor for certificate as a registered nurse, in the absence of a clear showing of abuse of discretion. State ex rel. Scollard v. Board of Examiners, 52 M 91, 98, 156 P 124.

Id. The fact that the act creating the board of examiners for nurses does not provide that the members thereof take an official oath cannot detract from their character as public officers, since the sec-

tion of the constitution, requiring every public officer within the state to take the oath therein prescribed, is self-executing.

Constitutionality

This statute is not unconstitutional as depriving, without due process of law, nurses who have not registered of the right to follow a lawful business or calling, since it is expressly provided that it shall not apply to gratuitous nursing, nor to any person nursing for hire who does not pretend to have special training and to be a registered nurse. State ex rel. Marshall v. District Court, 50 M 289, 296, 146 P 743.

Purpose of Act.

The aim of this act is not to prohibit the practice of nursing, either gratuitously or for hire, but to designate the persons for whose qualifications the state is willing to stand sponsor, and to forbid persons from claiming such sponsorship who are not entitled to it. The matter is wholly administrative, and the process of administration may be committed to any agency the legislature may choose to select, with or without direct appeal to the courts or elsewhere. State ex rel. Marshall v. District Court, 50 M 289, 297, 146 P 743.

3204. Appointment of board of examiners for nurses. The governor of the state of Montana shall, within ninety days after the passage and approval of this act, designate and appoint five persons who shall constitute the board of examiners for nurses. Said board shall consist of five members, and shall be appointed by the governor from the membership of the Montana state association of graduated nurses. The first board shall hold office during the following terms:

One member for the period of one year;

Two members for the period of two years;

Two members for the period of three years—

and the members and the terms thereof to be designated by the governor.

History: En. Sec. 2, Ch. 50, L. 1913; re-en. Sec. 3204, R. C. M. 1921.

3205. Filling of vacancies in board. Subsequent to the organization of state board of examiners for nurses, the governor of the state of Mon-

tana shall fill all vacancies and shall perpetuate said board by appointment of members thereof, which members for appointment shall be selected from persons who are registered nurses under the provisions of this act, and who shall be members of the Montana state association of graduate nurses, and who shall be actual residents of the state of Montana for a period of at least one year immediately preceding the date of appointment and who have actively engaged in the profession of nursing for five years prior to such appointment; and there shall be at all times at least two members of said board who shall have had at least two years' experience in educational work among nurses, or who have had two or more years' experience in the instruction of nurses in training schools.

The terms for which said members shall be appointed shall be for three years, except those first appointed and those to fill unexpired terms.

History: En. Sec. 3, Ch. 50, L. 1913; amd. Sec. 1, Ch. 117, L. 1919; re-en. Sec. 3205, R. C. M. 1921.

3206. Organization of board—officers and compensation. The members of the board shall, immediately after their appointment, meet at the city of Helena for the purpose of organizing said board, and shall elect one of their number president, and shall elect one of their number as treasurer, and shall also elect a secretary, who shall not be a member of the board, who shall also act as inspector of the training schools for nurses, and perform such other services as may be required by the board, and who shall devote her entire time to such work. The board shall adopt a seal which shall remain in the custody of the secretary; the secretary shall keep the records and minutes of the meeting of the board, and shall record in a suitable book the names of all the nurses and training schools registered under this act. The president and secretary of said board shall hold office for the period of one year, and until their successors are appointed and qualified. The salary of the secretary shall be settled and fixed by the board, not exceeding, however, the sum of twenty-four hundred dollars per year. The other members of the board shall receive ten dollars per day while actually engaged in attendance upon meeting of said board, and ten dollars per day for actual time lost in traveling to and from board meetings, and necessary expenses incurred in attending such meetings.

This shall be in full for their expenses, same to be paid from the funds in the hands of the treasurer of the board.

History: En. Sec. 4, Ch. 50, L. 1913; amd. Sec. 2, Ch. 117, L. 1919; re-en. Sec. 3206, R. C. M. 1921.

3207. Subjects on which examination to be held. Said board shall provide a schedule of subjects upon which applicants shall be examined to qualify for registration under this act, which subjects shall include anatomy, physiology, obstetrics and gynecology, surgery, hygiene and bacteriology, materia-medica, medical and contagious diseases, pediatrics, dietetics, and nursing ethics, and history of nursing.

History: En. Sec. 5, Ch. 50, L. 1913; amd. Sec. 3, Ch. 117, L. 1919; re-en. Sec. 3207, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1929.

3208. Duty of inspector of training schools—registration of nurses. The inspector of training schools shall inspect all training schools for

nurses in the state of Montana, and shall report to the board and the governor such training schools as shall provide courses of instruction in the subjects required by the board. The board shall register for a period of one year all such training schools, and shall issue a certificate of registration thereto. Any school so registered shall be required to pay to the treasurer of the board a fee of twenty-five dollars upon registration. The fee for a renewal certificate of registration for the period of one year shall be five dollars. The secretary shall also enter in the register kept for such purposes the names of all nurses who are registered under the provisions of this act, and such register shall be a public record.

History: En. Sec. 6, Ch. 50, L. 1913; amd. Sec. 4, Ch. 117, L. 1919; re-en. Sec. 3208, R. C. M. 1921.

3209. Examination of applicants. The board shall adopt rules, which may be changed from time to time, for the examination of applicants for registration under this act, and the board shall meet not less than once each year for the purpose of conducting examinations for applicants for registration. The time and place of meeting of said board shall be advertised in the public press, and notice shall be sent to each training school registered under this act, to each regularly organized association of nurses within the state, to at least one journal of nursing, and notice shall be mailed to each person who has made application for examination under the provisions of this act, at least thirty days prior to said meeting. At such meeting it shall be the duty of the board to examine all persons who are applicants for registration under this act, and to recommend to the governor each duly qualified applicant who shall have successfully passed said examination.

History: En. Sec. 7, Ch. 50, L. 1913; re-en. Sec. 3209, R. C. M. 1921.

3210. Qualifications of applicants—evidence of—registration fee. Applicants for registration under the provisions of this act shall furnish satisfactory evidence that he or she is at least twenty-one (21) years of age, of good moral character, and has been graduated from a school of nursing connected with a general hospital approved by the board, where a systematic course of at least three (3) years' instruction is given, except in the cases hereinafter provided for; provided, that the board may grant proper credit upon such three (3) year period to any student for previous study or training under such rules and regulations as the board may prescribe.

No school of nursing shall accept students under eighteen (18) years of age, nor students who have not graduated from an accredited high school. A copy of the high school credits certified to by the principal and filed in the school of nursing shall be prima facie evidence of graduation.

All persons registered under the provisions of this act shall pay to the secretary of the board a registration fee of fifteen dollars (\$15.00).

History: En. Sec. 9, Ch. 50, L. 1913; amd. Sec. 5, Ch. 117, L. 1919; re-en. Sec. 3210, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1925; amd. Sec. 2, Ch. 129, L. 1929; amd. Sec. 1, Ch. 29, L. 1933.

Testimony as to Character

Testimony touching the immoral character of the applicant, introduced at a

divorce proceeding to which she was a party, could rightfully be taken into consideration by the board in passing upon the question of her character. *State ex rel. Scollard v. Board of Examiners*, 52 M 91, 98, 156 P 124.

Id. In its determination of the question whether an applicant for registration as a nurse possesses the good moral character

made a prerequisite to certification, the board of examiners is not bound to accept affidavits of citizens deposing to such good character as conclusive, but it may

hear evidence, to be produced before it in such manner as it may choose to adopt both in opposition to as well as in favor of the applicant.

3211. Issuance of certificates by reciprocity. The governor shall issue a certificate of registration to any person registered under the laws of any other state having requirements for registration equivalent to those of Montana; the board to be the sole judges thereof.

History: En. Sec. 10, Ch. 50, L. 1913; amd. Sec. 6, Ch. 117, L. 1919; re-en. Sec. 3211, R. C. M. 1921; amd. Sec. 3, Ch. 129, L. 1929.

3211.1. Renewal of certificate—fee. During the month of December of each year, every registered nurse shall renew his or her certificate of registration for the year beginning January first with the board of examiners for nurses, for which renewal a fee of one dollar (\$1.00) shall be paid to the treasurer of said board. The board may grant a renewal without fee for reasons which are satisfactory to it, and upon granting such renewal the secretary of such board shall issue a certificate of renewal of registration.

History: En. Sec. 3211-A by Sec. 3, Ch. 123, L. 1925; amd. Sec. 4, Ch. 129, L. 1929.

3212. Appeals to state association of graduate nurses and to district court. Any person who makes application to the board for examinations for registration, having the required qualifications, as hereinafter provided for, and who shall not pass said examination, or any person registered in any other state, who shall be refused registration by the board without examination, as provided for in this act, may appeal to the Montana state association of graduated nurses at the first annual meeting thereafter, and shall abide by the majority vote of said association after a full hearing thereon; provided, that any person aggrieved by any decision of the board of graduated nurses, finally determining his or her right to registration, may appeal from such decision to the district court of the county of the residence of said applicant, within thirty days after receiving notice from the board of its decision, which appeal shall be taken by filing notice of appeal with the clerk of the proper district court, and by serving copy thereof upon the secretary of said board. In case of a jury trial said jury shall consist of three nurses registered under the provisions of this act, and three reputable physicians in active practice.

History: En. Sec. 11, Ch. 50, L. 1913; amd. Sec. 1, Ch. 122, L. 1917; amd. Sec. 7, Ch. 117, L. 1919; re-en. Sec. 3212, R. C. M. 1921.

Appellate Procedure

In the absence of provisions prescribing the procedure on appeal from a decision of the state board of examiners for nurses, the statute implies such orderly procedure as will enable the appellate body to fairly determine the right of appellant to regis-

tration. State ex rel. Marshall v. District Court, 50 M 289, 297, 146 P 743.

Id. In contemplation of law, the appellate body is merely an agency for carrying into effect the provisions of the act; the legislature is not required to designate corporations or individuals, to the exclusion of voluntary associations, as agencies for such purposes; on the contrary, it is the settled rule that no such restriction exists.

3213. All applicants to be examined after July, 1917. On and after July 1, 1917, all applicants for certificates of registration under the provisions of this act shall be residents of the state of Montana, and shall pass the examination required by the board before receiving a certificate

of registration, or shall present to the board necessary credentials of registration in another state whose requirements for registration are equivalent to those of Montana.

History: En. Sec. 12, Ch. 50, L. 1913; amd. Sec. 8, Ch. 117, L. 1919; re-en. Sec. 3213, R. C. M. 1921.

3214. Unlawful to practice without certificate. It shall be unlawful hereafter for any person to practice nursing as a trained, graduate, or registered nurse without a certificate as herein provided for.

Any person who shall assume a title indicating that said person is a trained, graduate, or registered nurse, or who shall hold himself or herself out to be a trained, graduate, or registered nurse, and who shall not be registered in accordance with the provisions of this act, shall be guilty of a misdemeanor, and upon conviction hereof shall be fined for the first offense not less than ten dollars nor more than one hundred dollars, and for each subsequent offense not less than two hundred dollars nor more than five hundred dollars.

History: En. Sec. 13, Ch. 50, L. 1913; amd. Sec. 9, Ch. 117, L. 1919; re-en. Sec. 3214, R. C. M. 1921.

3215. Interpretation of act. This act shall not be construed as conferring any authority to practice medicine, or undertake the treatment of disease, in violation of the medical-practice act of the state of Montana, or to affect or to apply to the gratuitous nursing of the sick by friends or members of the family, nor to any person nursing the sick for hire who does not in any way assume or pretend to have special training in the profession of nursing, and who also does not pretend to be a registered nurse.

History: En. Sec. 13, Ch. 50, L. 1913; amd. Sec. 9, Ch. 117, L. 1919; re-en. Sec. 3215, R. C. M. 1921.

3216. Revocation of certificate. The governor shall, upon recommendation by the board, revoke any certificate previously issued to the holder thereof, after a hearing by the full board on charges made by any licensed physician in the active practice of his profession, or upon charges made by the inspector of training schools for nurses, a registered nurse, or any other person charging dishonesty, gross incompetence, a habit rendering a nurse unsafe or unfit to care for the sick, or any conduct or act derogatory to the morals or standing of the profession of nursing, or any wilful fraud or misrepresentation practiced in securing such certificate.

The person so charged under this section shall be given at least thirty days' notice in writing of the specific charge against him or her, and of the time and place of hearing said charge by the board, at which time and place such person shall be entitled to appear and to be represented by counsel. Upon the revocation of any certificate heretofore issued, the same shall be null and void, and the secretary shall take the name of the holder thereof from the roll of registered nurses.

History; En. Sec. 15, Ch. 50, L. 1913; amd. Sec. 10, Ch. 117, L. 1919; re-en. Sec. 3216, R. C. M. 1921.

References

Cited or applied as section 15, chapter 50, laws of 1913, before amendment, in State ex rel. Scollard v. Board of Examiners, 52 M 91, 96, 156 P 124.

CHAPTER 274

VETERINARY MEDICINE AND SURGERY—REGULATION OF PRACTICE

- Section 3217. Appointment of state board of veterinary medical examiners.
3218. Organization of board—quorum—powers.
3219. Expenses and funds—records and reports.
3220. Application for license to practice—examinations—fees.
3221. Application for license as farrier.
3222. Farrier defined.
3223. Issuance, registration, and revocation of licenses.
3224. Display of license and certificate—arrangement with other boards.
3225. Veterinary medicine and surgery defined—qualifications for practice.
3226. Revocation of certificate.
3227. Interpretation of statute—persons not embraced within provisions.
3228. Practice in violation of law—penalties.

3217. Appointment of state board of veterinary medical examiners.

That there be and is hereby created a state board of veterinary medical examiners, to be appointed by the governor of the state of Montana, which shall consist of three reputable practitioners of veterinary medicine and surgery, who shall have graduated from some college authorized by law and recognized by the American veterinary medical association to confer degrees, and each of whom shall, after the first board has been appointed, be licensed under this act. The appointments first made shall be one for one year, one for two years, and one for four years, and thereafter appointments shall be made for the term of four years. The Montana state veterinary medical society shall, at each annual meeting, nominate twice the number of examiners to be appointed that year on the board. The names of such nominees shall be annually transmitted under seal by the president and secretary, prior to May first, to the governor, who shall, prior to August first, appoint from such lists the examiners that will be required to fill any vacancies that will occur from expiration of term on July thirty-first. Any other vacancy, however occurring, shall likewise be filled by the governor for the unexpired term. Each nominee, before appointment, shall furnish to the governor proof that he has received a degree in veterinary medicine from an authorized veterinary medical school, and that he has actually and legally practiced veterinary medicine in this state for at least two years. If no nominees are legally before him from the society, the governor may appoint from members of the veterinary profession in good standing in Montana without restriction. The governor may, after due notice and hearing, remove any examiner for misconduct, incapacity, or neglect of duty.

History: En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R. C. M. 1921.

3218. Organization of board—quorum—powers. Every veterinary medical examiner shall receive a certificate of appointment from the governor, and, before beginning his term of office, shall file with the secretary of state the constitutional oath of office. The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold two regular meetings each year. At any meeting a majority shall constitute a quorum. If any member of the board shall, without cause, absent himself from two of its regular meetings consecutively, his office shall be deemed vacant. The board may take testimony and proofs con-

cerning all matters within its jurisdiction. The board may make all by-laws and rules not inconsistent with law needed in performing its duties.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R. C. M. 1921.

3219. Expenses and funds—records and reports. Each member of the board shall be entitled to receive all necessary traveling and incidental expenses, provided such expenses shall not exceed the amount in the treasury during any fiscal year. The secretary-treasurer shall receive an additional salary to be fixed by the board and not to exceed one hundred and fifty dollars per annum. The secretary-treasurer shall give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of one thousand dollars, which shall constitute a trust fund to be used, besides salaries and other expenses of the board, in carrying on prosecutions under the provisions of this act. If, at any time, the amount of money received, after deducting such salaries and expenses, shall amount to more than one thousand dollars, the secretary-treasurer shall forward the same to the treasurer of the state of Montana, and receive his official receipt for same. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve months immediately preceding.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921.

3220. Applications for license to practice—examinations—fees. Any person desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 3227, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school recognized by the American veterinary medical association; said school or college having a curriculum requiring a three-year course, or its equivalent, for graduation. On application, the diploma of said applicant shall be submitted to said board for inspection and verification. Every person applying to said board for license to practice shall pay to the board the fee of ten dollars, which fee shall in no case be refunded, and which shall become a part of the funds of the treasury of the board. Said board shall by means of examination, either oral or written as the board may determine, ascertain the professional qualifications for license of all applicants under this act, and shall issue such license to all who are found upon examination to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination to be com-

petent. Such examination shall be held at a time and place or places specified by said board, and shall include suitable questions for a thorough examination in comparative anatomy, physiology and hygiene, in chemistry and veterinary surgery, obstetrics, pathology, and diagnosis, and therapeutics, including practice of materia medica, bacteriology, parasitology, and other branches deemed advisable by the board. Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians holding a diploma from a recognized veterinary medical school, who are at the time of the passage and approval of this act engaged in the practice of veterinary medicine in the state of Montana, shall be entitled to a license without such examination. Any candidate failing on one subject, with a general average of eighty per cent. in the others, may be re-examined in that subject at any regular examination; failing in one subject with a lower average, or in two or more subjects, may be admitted to a subsequent examination on original fee after six months have elapsed, and must then take the examination in all subjects. The board may issue temporary license to such candidate, allowing him or her to practice pending the successful passage of an examination.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921.

3221. Application for license as farrier. Any person desiring to begin the practice of treating domestic animals in the state of Montana, under the title of farrier, shall make application to said board of veterinary medical examiners on or before July 1, 1919, so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by the fee prescribed in the preceding section, and satisfactory evidence of the good moral character of the applicant, who shall present satisfactory evidence of having resided in the state of Montana for a period of twenty-four months immediately previous to the passage and approval of this act, and of having treated domestic animals as a part of his or her vocation during that period, and a license shall be granted. Such license shall entitle him or her to all the rights and privileges of this act except those contained in section 3225 of this code.

History: En. Sec. 5, Ch. 82, L. 1913; amd. Sec. 2, Ch. 150, L. 1919; re-en. Sec. 3221, R. C. M. 1921.

3222. Farrier defined. A farrier is any person who has had experience in treating the diseases of domestic animals.

History: En. Sec. 6, Ch. 82, L. 1913; re-en. Sec. 3222, R. C. M. 1921.

3223. Issuance, registration, and revocation of licenses. The state board of veterinary medical examiners will, at the conclusion of a regular examination, if in their judgment the applicant is duly qualified therefor, issue a license to practice veterinary medicine and surgery or farriery. Every license so granted by the board shall be issued under seal, and shall be signed by each acting veterinary medical examiner of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and all other matters

required by law, and that after full examination he or she has been found duly qualified to practice. Each person licensed by the board to practice veterinary medicine or veterinary surgery or farriery in this state shall procure from the secretary of the board on, or before July first, annually, his certificate of registration. Such certificate shall be issued by the secretary upon the payment of a fee to be fixed by the board, not exceeding the sum of two dollars, and certificates so issued shall be prima facie evidence of the right of the holder to practice veterinary medicine or veterinary surgery or farriery in this state during the time for which they are issued. Any certificate of license, granted by the board, may be revoked upon conviction of the party holding such certificate or license of a violation of any of the provisions of this act.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R. C. M. 1921.

3224. Display of license and certificate—arrangement with other boards. Every person practicing veterinary medicine or veterinary surgery in the state of Montana, or representing himself as so practicing, shall display or cause to be displayed conspicuously in his or her usual place of business, license or certificate of registration issued to him or pursuant to the provisions of this act. The board of examiners shall make arrangement with similar boards in the several states in so far as practicable, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said board as desire to secure license or practice veterinary medicine or surgery in this state, and whereby licensees of the board of veterinary medical examiners in this state will secure due credit for license issued by said board, whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine or surgery in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R. C. M. 1921.

3225. Veterinary medicine and surgery defined—qualifications for practice. Any person shall be regarded as practicing veterinary medicine or surgery in the state of Montana, who shall append or cause to be appended to his name upon any display or advertisement published the letters V. S., D. V. M., V. M. D., M. D. C., D. V. S., or M. R. C. V. S., or the words "veterinary," "veterinarian," "veterinary surgeon," "veterinary dentist," "veterinary horseshoer," "horse dentist," or "horse doctor," or who shall publicly profess to do any of these things, directly or indirectly, as a veterinarian. No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana after July 1, 1913, unless licensed by the state board of veterinary medical examiners of the state of Montana, and registered as required by this chapter; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R. C. M. 1921.

3226. Revocation of certificate. On hearing, the board may revoke any certificate which is obtained by fraud, or where the holder is guilty of gross moral or professional misconduct.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R. C. M. 1921.

3227. Interpretation of statute—persons not embraced within provisions. This article shall not be construed to affect commissioned veterinary medical officers serving in the United States army or in the United States bureau of animal industry while so commissioned; or any person doing castrating or spaying, or giving gratuitous services; or any person treating an animal belonging to himself as the case may be; or any lawfully qualified veterinarian in other states or any foreign country meeting legally registered veterinarians in this state in consultation; or any veterinarian residing on a border of a neighboring state and duly authorized under the laws thereof to practice veterinary medicine therein, whose practice extends into this state, and who does not open an office or appoint a place to meet patients or receive calls within this state.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R. C. M. 1921.

3228. Practice in violation of law—penalties. Every person who shall practice veterinary medicine or farriery within this state, without lawful registration or in violation of any provisions of this article, shall forfeit to the county wherein such person shall so practice, or in which any violation shall be committed, not to exceed fifty dollars for every such violation, and for every day of such unlawful practice, and any incorporated veterinary medical society of the state may bring action in the name of such county for the collection of such penalties, and the expense incurred by such society in such prosecution, including necessary counsel fees, may be retained by such society out of the penalties so collected, and the residue, if any, such shall be paid into the county treasury. The state board of veterinary medical examiners may, out of the funds in the treasury, when sufficient proof is before them, begin proceedings for prosecutions under the provisions of this act, independent of such state societies. Any person who shall practice veterinary medicine or farriery under a false or assumed name, or who shall falsely personate another practitioner of a like or different name, shall be guilty of a felony; and any person guilty of violating any of the other provisions of this article, not otherwise specifically punished herein, or who shall buy, sell, or obtain any veterinary medical diploma, license, record, or registration, or who shall aid or abet such buying, selling, or fraudulently obtaining, or who shall practice veterinary medicine or farriery under cover of a license or diploma illegally obtained, or signed or issued unlawfully under fraudulent representation, or mistake of fact in material regard, shall attempt to practice veterinary medicine or farriery, and any person who shall, without having been authorized so to do legally, append any veterinary title to his or her name, or shall assume or advertise any veterinary title in such manner as to convey the impression that he or she is a lawful practitioner of veterinary medicine or farriery, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by

a fine of not more than fifty dollars, or by imprisonment in the county jail not more than twenty-five days, or both such fine and imprisonment.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R. C. M. 1921.

CHAPTER 275

COSMETOLOGY AND HAIRDRESSING—REGULATION OF PRACTICE

Section	3228.1.	License required to practice cosmetology.
	3228.2.	Definition.
	3228.3.	Requirements for practicing or teaching cosmetology.
	3228.4.	Creation of state examining board of beauty culturists—term—appointment—qualifications.
	3228.5.	Meeting—officers to be selected.
	3228.6.	Rules by the board.
	3228.7.	Registration—licenses.
	3228.8.	Examinations.
	3228.9.	Compensation of members of board.
	3228.10.	Bond of treasurer.
	3228.11.	Powers and duties of the board.
	3228.12.	Sanitary rules.
	3228.13.	Inspector of beauty parlors—salary and expense.
	3228.14.	Appeal from actions of the board.
	3228.15.	Fees.
	3228.16.	Duration and renewal of licenses.
	3228.17.	Penalties.
	3228.18.	To whom provisions in this act shall not apply.

3228.1. License required to practice cosmetology. That on and after the date on which the act goes into effect, no person shall practice or teach cosmetology and no place shall be used or maintained for the practice or teaching of cosmetology, for compensation, except under a license issued in compliance with the requirements of this act.

History: En. Sec. 1, Ch. 104, L. 1929.

3228.2. Definition. The practice and teaching of cosmetology is defined to be and includes any or all work generally and usually included in the term “hairdressing” and “beauty culture” and performed in so-called hairdressing and beauty shops, which work is done for the embellishment, cleanliness and beautification of the hair, scalp, face, arms or hands.

History: En. Sec. 2, Ch. 104, L. 1929.

3228.3. Requirements for practicing or teaching cosmetology. Before any one may practice or teach cosmetology, such person shall file with the secretary of the state board a written application for registration, accompanied by a health certificate, issued by a registered licensed physician, on a form prescribed and supplied by the state board, and also submit satisfactory proof of good moral character, and shall deposit with the secretary of the said board, the required fee and pass an examination as to fitness to practice or teach cosmetology or any practices thereof. If a hairdresser or cosmetologist shall after securing a certificate, contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend the certificate until such time as the hairdresser or cosmetologist can secure a satisfactory physician's certificate.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931.

3228.4. Creation of state examining board of beauty culturists—term—appointment—qualifications. There is hereby created a state examining

board which shall be called and styled "The Montana state examining board of beauty culturists," consisting of three members, each of whom shall be a hairdresser or cosmetologist, to be appointed by the governor, from a list of six persons recommended by the state board of health, each to serve four years and until his or her successor is appointed; provided, that on the first board one member shall be appointed to serve two years; one member three years and one member four years and until their successors are appointed. Such members must have at least three (3) years practical experience in their respective occupations and shall be citizens of this state. No two members of the said board shall be members of, nor affiliated with any school teaching any of the classified occupations, while in office. This board may be referred to hereinafter in this act as the "state board." Said board shall adopt a seal to authenticate its acts.

History: En. Sec. 4, Ch. 104, L. 1929.

3228.5. Meeting—officers to be selected. The state board shall meet as soon as convenient after being appointed and elect from among their number a president and a secretary and treasurer. The offices of secretary and treasurer may be filled by the same member.

History: En. Sec. 5, Ch. 104, L. 1929.

3228.6. Rules by the board. The state board shall prescribe reasonable rules for its own conduct and for the qualifications, the registration and examination of applicants to practice or teach cosmetology and for the registration and instruction of apprentices and students and the conduct of schools thereof, and generally for the conduct of persons, firms or corporations affected by this act.

History: En. Sec. 6, Ch. 104, L. 1929.

3228.7. Registration—licenses. If the board finds that an applicant for registration or examination has submitted the credentials required, and has paid the required fee, the board shall register, or admit such applicant to examination and shall issue a license to those entitled to it or who have successfully passed the said examination as the case may be.

History: En. Sec. 7, Ch. 104, L. 1929.

3228.8. Examinations. Examinations shall be held at least two times a year at a place and time specified by the said board and shall be conducted by said state board or persons appointed by the said board for said purpose. Such examiners shall have had at least three years' practical experience and be of established reputation and known ability in the practice of cosmetology and shall not be connected with any school of cosmetology. The examinations shall not be confined to any specific method or system.

Provided that physically handicapped persons trained for cosmetology under the state bureau of vocational rehabilitation shall, for a period of one year immediately following their graduation, be exempted from this examination and the fees described in section 3228.15. Upon certification from the state supervisor of rehabilitation that a bureau beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the secretary of the state board shall issue to such person the necessary certificate or license to practice the profession in Montana.

History: En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935.

3228.9. Compensation of members of board. Each member of said board shall receive ten dollars (\$10.00) for each day, not to exceed three consecutive days employed in the actual discharge of his or her official duties and his necessary expenses so incurred. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of the official duties. The state board may make reasonable provisions for its expenses in the enforcement of this act and for compensation and expenses of examiners.

History: En. Sec. 9, Ch. 104, L. 1929.

3228.10. Bond of treasurer. The treasurer of said state board shall give a corporate surety bond payable to the board, in the sum of five thousand dollars (\$5,000.00) approved by the said board, conditioned as the board may specify for the faithful performance of the duties of this office. Such bond shall have the oath of office endorsed thereon and shall be deposited with the president of the board, and kept in his or her office.

History: En. Sec. 10, Ch. 104, L. 1929.

3228.11. Powers and duties of the board. The board shall have the power to refuse, revoke or suspend licenses or certificates upon due hearing and proof of violation of the rules and regulations established by the board under this act and shall have the power to require the attendance of witnesses and the production of books, records and papers as it may desire and further proceed under the same rules as established by law in criminal cases.

History: En. Sec. 11, Ch. 104, L. 1929.

3228.12. Sanitary rules. The said board, subject to the approval of the state board of health, shall prescribe such sanitary rules as it may deem necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929.

3228.13. Inspector of beauty parlors—salary and expense. The state board of health shall appoint, and may remove, one inspector who is licensed to practice under this act, who shall devote his time to inspecting beauty parlors and in doing such other duties connected therewith the board assigns, and who may enter any beauty parlor or school of hair-dressing or cosmetology during business hours for the purpose of inspection. The salary of such inspector shall be fixed by the state board and his salary and expense shall be paid out of the funds of said board.

History: En. Sec. 13, Ch. 104, L. 1929.

3228.14. Appeal from actions of the board. An appeal may be taken from any actions of the said board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929.

3228.15. Fees. Each applicant for examination and applicant for admission without examination by virtue of a license issued in another juris-

diction, shall pay at the time of such application a fee of ten dollars (\$10.00). Each person engaged in any of the practices defined herein shall pay a fee of five dollars (\$5.00) for the issuance of the license certificate and each renewal thereof. Each person conducting a school referred to herein shall pay an annual fee of twenty five dollars (\$25.00). Such fees shall be paid in advance to the secretary of the board, and no moneys shall be paid out of the funds of the board except upon warrant authorized by majority vote of the board and signed by the president and secretary of the board.

History: En. Sec. 15, Ch. 104, L. 1929.

3228.16. Duration and renewal of licenses. Licenses shall be issued for no longer than one year. All licenses shall expire on the 31st day of December next succeeding unless renewed for the next year. Licenses may be renewed by application made prior to the 31st day of December of each year, and the payment of a required renewal fee. Expired licenses may be renewed under special rules adopted by the board.

History: En. Sec. 16, Ch. 104, L. 1929.

3228.17. Penalties. Any person who shall practice or teach beauty culture, or act in any capacity wherein registration or license is required, without complying with this act, shall be guilty of a misdemeanor. All fines and penalties shall be paid into the treasuries of the several counties for the use and benefit of the common school fund thereof.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931.

3228.18. To whom provisions in this act shall not apply. Nothing in this act shall prohibit service in case of emergency or domestic administration without compensation, nor services by persons authorized under the laws of this state to practice dentistry, or to practice the healing art and licensed undertakers, nor services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation, or in cutting women's hair by barbers.

History: En. Sec. 18, Ch. 104, L. 1929.

CHAPTER 276

BARBERS AND BARBER SHOPS

Section	3228.19.	Sanitation.
	3228.20.	Practice defined.
	3228.21.	Qualifications for certificate of registration as registered barber— apprentices—barber schools.
	3228.22.	Present practitioners may receive certificate of registration, how.
	3228.23.	Display of certificate.
	3228.24.	Board of barber examiners—creation, qualifications, appointment and term of office.
	3228.25.	Officers, official seal, bond.
	3228.26.	Compensation, funds and reports.
	3228.27.	Powers and duties.
	3228.28.	Penalties for violations.
	3228.29.	Fees.
	3228.30.	Registration of barbers required—shop to be managed by registered barber.

3228.19. Sanitation. All barber shops shall be operated and maintained in a sanitary condition so as to preserve the public health and pre-

vent the spread of disease. The board herein created and the state board of health are empowered to make and enforce all reasonable rules and regulations therefor. No barber or barber apprentice shall receive a certificate of registration nor a renewal of same, until he has presented to the board a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public, and any person practicing barbering without a certificate of registration is guilty of a violation of this act.

If a barber or barber apprentice shall after securing his certificate contract a communicable disease, endangering the public health, the board shall upon proof of same cancel or suspend the certificate until such a time as the barber or barber apprentice can secure a satisfactory physician's certificate.

History: En. Sec. 1, Ch. 127, L. 1929.

3228.20. Practice defined. Any one or any combination of the following practices, when done for tonsorial purposes in a regularly established place of business for pay, constitutes the practice of barbering:

Shaving or trimming the beard or cutting the hair;

Giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;

Singeing or shampooing the hair or applying hair tonic; or dyeing the hair of males;

Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face or neck.

History: En. Sec. 2, Ch. 127, L. 1929.

3228.21. Qualifications for certificate of registration as registered barber—apprentices—barber schools. A person is qualified to receive a certificate of registration to practice barbering:

(a) Who has practiced as a registered apprentice for a period of eighteen (18) months under the immediate personal supervision of a registered barber; and who has passed a satisfactory examination conducted by the board to determine his fitness to practice barbering.

(b) Who is a graduate of a school of barbering, and who has passed a satisfactory and practical examination conducted by the board to determine his fitness to practice barbering.

(c) Who has served as an apprentice. An apprentice, for the purpose of this act, is a person who receives instruction in an approved barber school or from a barber authorized to practice barbering under this act. Every apprentice must file with the board a statement in writing showing the name and place of business of his instructor or school, the date of commencement of apprenticeship, and the full name and age of said apprentice, and shall pay to the board a fee of three dollars (\$3.00), whereupon the board shall issue to said apprentice a card. No school of barbering shall be approved by the board unless it requires a continuous course of instruction of six (6) months of not more than eight (8) hours in any working day; such course of instruction to include the following subjects: scientific fundamentals of barbering, practical study of the hair, skin, sterilization and

antiseptics, diseases of the skin, and hair, massaging and manipulating the muscles of the face and neck, hair cutting, shaving and trimming the beard. Every barber school or college must be in charge of a person who has had ten (10) years' continuous experience as a barber, providing that the owner of such school shall first secure from the board a permit to operate on payment of an annual license fee of one hundred dollars (\$100.00), and shall keep said permit prominently displayed, and shall before commencing business file with the secretary of state a bond to the state, approved by the attorney general, in the sum of two thousand dollars (\$2,000.00), conditioned upon the faithful compliance of said barber school with all the provisions herein; and to pay all judgments that may be obtained against said school or the owners thereof on account of fraud, misrepresentation or deceit practiced by them or their agents; provided, further, that all barber schools or colleges shall keep prominently displayed a substantial sign as barber school or college. Provided, further, that all barber schools upon receiving students shall immediately apply to said board for student permits upon blanks for said purpose furnished by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931.

3228.22. Present practitioners may receive certificate of registration, how. Any person engaged in the practice of barbering in this state at the time this act goes into effect, provided he furnish a satisfactory physician's certificate, approved by the state board of health, shall be granted a certificate of registration as a registered barber without other examination, provided further that such person shall apply for a certificate on or before the first of August, 1929.

History: En. Sec. 4, Ch. 127, L. 1929.

3228.23. Display of certificate. Every holder of a certificate of registration shall display it in a conspicuous place, adjacent to or near his or her work chair.

History: En. Sec. 5, Ch. 127, L. 1929.

3228.24. Board of barber examiners—creation, qualifications, appointment and term of office. A board to be known as a board of barber examiners is established to consist of three (3) members appointed by the governor. Each member shall be a practical barber who has followed the occupation of barber in this state for at least five (5) years immediately prior to his appointment. The membership of the first board of barber examiners shall serve for three (3) years, two (2) years and one (1) year respectively as appointed, and members appointed thereafter shall serve for three (3) years. The governor may remove a member for cause.

History: En. Sec. 6, Ch. 127, L. 1929.

3228.25. Officers, official seal, bond. The board shall elect a president, secretary and treasurer. It shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings of the board and shall at least once a month turn over to the treasurer of the board all moneys collected. The secretary and treasurer shall each furnish a surety bond in the sum of five thousand dollars

(\$5,000.00), for the faithful performance of his duties; said bond to be filed with the secretary of state and shall be approved by the governor.

History: En. Sec. 7, Ch. 127, L. 1929.

3228.26. Compensation, funds and reports. Each member of the board shall receive a compensation of ten dollars (\$10.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meetings of said board.

The board of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report.

History: En. Sec. 8, Ch. 127, L. 1929.

3228.27. Powers and duties. The board shall conduct practical examinations of applicants for certificates of registration to practice as registered barbers, not less than two (2) times each year at such times and places as the board may determine. Said examination shall cover the fundamentals of barbering, dermatology and sanitation. The board shall issue all certificates of registration. (The board may, at its discretion, appoint inspectors with authority to inspect barber shops, their compensation to be the same as provided for members of the board while engaged in said duties.) The board shall have authority to make necessary rules and regulations for the administration of the provisions of this act not inconsistent with this act nor the laws of the state.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931.

3228.28. Penalties for violations. Any person practicing the occupation of a barber without first having obtained a license, as provided in this act, or any person knowingly employing a barber who has not obtained such license, or any person who falsely pretends to be qualified to practice such occupation under this act, or any person who fails to properly sterilize each and all of his tools and fails to have all linen properly laundered prior to use on each and every person, and any person who permits any one in his employ, supervision or control, to practice barbering without a license from the board and any person who obtains, or attempts to obtain, a license for money other than the required fee, and any person who wilfully fails to display the license as required by this act, and any person who violates any of the provisions of this act, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) or imprisonment in the county jail for not less than ten (10) days nor more than ninety (90) days or both. In addition to the penalty hereinbefore prescribed, the board may, after hearing, suspend or revoke any certificate of registration by reason of any person wilfully violating this act or persistently failing to conform to the lawful rules and regulations promulgated by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931.

3228.29. Fees (a) The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering shall be fifteen dollars (\$15.00); and for the issuance of the certificate, an additional three dollars (\$3.00). The fee to be paid by an apprentice for certificate of registration shall be the sum of three dollars (\$3.00).

(b) Each person registered as a barber or barber apprentice shall on or before the first of August of each year renew his certificate and the fee therefor shall be three dollars (\$3.00).

(c) A permit may be issued by the board to any eligible applicant for examination, other than an apprentice, upon the payment of the examination fee of fifteen dollars (\$15.00), and said permit shall allow him to practice under a licensed barber until the next examination for barbers, at which time he shall appear for examination. In case of failure to appear at such examination (except for sickness duly attested by a legally qualified physician or equally good reason) said applicant's permit shall be cancelled and his fee retained in the fund. The payment of such fee by an applicant shall entitle him to take the examination prescribed not more than three (3) times and if he shall fail to pass said examination after taking the same three (3) times, his rights under said application shall be exhausted and the said fee retained in the fund; provided, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a six (6) months' course in a reputable barber college will not be required to pay any fees but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act or any of its amendments.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931.

3228.30. Registration of barbers required—shop to be managed by registered barber. After July 1, 1929, no person shall practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice without first having received from the board of barber examiners a certificate of registration.

After July 1, 1929, it shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a registered barber.

History: En. Sec. 12, Ch. 127, L. 1929.

CHAPTER 277

ARCHITECTURE—REGULATION OF PRACTICE

- Section 3229. Appointment of board of architectural examiners.
3230. Organization of board—powers, meetings, and records.
3231. Examinations for certificates to practice—subjects embraced in—granting of certificates.
3232. Certificates to be recorded.
3233. Seal of architect.
3234. Penalty for practicing without a license.
3235. Corporations not to practice architecture—partners each to have license.
3236. Fees payable by applicants for examination—disposition of fees.

- 3237. Compensation of members of board—disposition and use of funds—annual report.
- 3238. Annual fee of licensed architects.
- 3239. Architects removing from state to be granted demit.
- 3240. Revocation of license.

3229. Appointment of board of architectural examiners. Within thirty days after the passage of this act, the governor, with the consent and advice of the senate, shall appoint three skilled and capable architects, who shall have been residents of the state of Montana for not less than three years prior to their appointment, not more than two of whom shall be residents of the same county, and who shall have been in continuous practice of the profession for three years, who shall constitute the board of architectural examiners for the purpose of this act.

The architects so appointed shall hold their respective offices for a term of four years, and all vacancies shall be filled in like manner as the appointments are made. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session.

History: En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R. C. M. 1921.

3230. Organization of board—powers, meetings and records. The board of architectural examiners must, during the first week in April of each year, elect from among their number a president, secretary, and treasurer, and must have a seal.

The president and secretary shall have power to administer oaths in examination of applications for certificates, and to witnesses called before the board for the transaction of business under the provisions of this act.

The members of the board shall meet during the first week of April of each year, and at such times, and at the same and other places as the board may determine.

The board must keep a record of all proceedings thereof, and also a register of all applicants for a certificate, with the name and age of all applicants and the number of years spent in the study of architecture, and whether or not the applicant was granted a certificate or rejected; such register is prima facie evidence of all matters therein kept.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R. C. M. 1921.

3231. Examinations for certificates to practice—subjects embraced in—granting of certificates. Every person hereafter wishing to practice architecture in this state shall apply to said board for a certificate so to do. Every person so applying shall submit to an examination in the following branches, to-wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, architectural drawing, technical education and experience, and such other branches as the board may deem advisable. Said board shall cause such examination to be both scientific and practical, but of sufficient severity to test the candidate's fitness to practice architecture in this state, or high standing in profession or such qualifications as are required for admission to the American institute of architects may be deemed sufficient. After examination said board shall, if the candidate has been found qualified, grant a certificate to such candidate to practice architecture within the state of Montana, which said

certificate can only be granted on the consent of not less than two members of the board, and attested by the secretary, and have the seal of said board attached thereto; provided, that the president of the board may, in the time of intervening between the sessions of the board, grant a certificate to any person desiring to practice architecture within the state of Montana, after satisfying himself of the qualifications of the applicant, which said certificate shall be good until the next regular meeting of the board; providing, however, nothing herein contained shall prevent or restrict a duly licensed architect from any state practicing his profession in Montana, upon the payment of the annual fees provided in this act.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R. C. M. 1921.

3232. Certificates to be recorded. Every person obtaining a certificate from said board must, within thirty days from the date thereof, have the same recorded in the office of the county clerk and recorder of the county wherein he resides. If he or she maintain offices for the practice of architecture in other counties, he or she must have his or her certificate recorded in such counties in like manner. The county clerk shall receive for recording such certificate the usual fee paid by the applicant.

History: En. Sec. 4, Ch. 158, L. 1917; re-en. Sec. 3232, R. C. M. 1921.

3233. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana," with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R. C. M. 1921.

3234. Penalty for practicing without a license. After six months from the passage of this act it shall be unlawful, and it shall be a misdemeanor punishable by a fine of not less than five dollars nor more than three hundred dollars, for each and every week during which said offense shall continue, for any person to practice architecture without a license in this state, by signing plans and specifications as an architect, or to advertise, or put out any sign or card, or other device, which might indicate to the public that he or she is entitled to practice as an architect.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R. C. M. 1921.

3235. Corporations not to practice architecture—partners each to have license. Any person who shall, by affidavit, show to the satisfaction of the state board of architectural examiners that he or she was engaged in the practice of the profession of architecture in the state of Montana on the date of the passage of this act, shall be entitled to a license without an examination, provided such application shall be made within six months after the passage of this act. Such license, when granted, shall set forth the fact that the person to whom the same was issued was practicing architecture in this state at the time of the passage of this act, and is therefore entitled to a license to practice architecture without an examination by the board of examiners, and the secretary of the board shall, upon the payment to him of the fee of fifteen dollars, issue to the person named in said affidavit a license to practice architecture in this state, in accordance with the

provisions of this act. In the case of a copartnership of architects, each member whose name appears on their seal, must be licensed to practice architecture. No stock company or corporation shall be licensed to practice architecture, but the same may employ licensed architects.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R. C. M. 1921.

3236. Fees payable by applicants for examination—disposition of fees. Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars, which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the architectural board fund as herein provided.

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921.

3237. Compensation of members of board—disposition and use of funds—annual report. Each member of the examining board is hereby allowed the sum of five dollars per day and mileage at the rate of ten cents per mile while in the discharge of his actual duties, to be paid out of any funds in the hands of the state treasurer in the name of the architectural board fund. And there is hereby established a fund known as the "architectural board fund."

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the architectural board fund, to meet the expenses incurred in carrying out the provisions of this act; provided the expenses of said board of examiners shall not exceed the fees collected.

The state treasurer is hereby directed and required to set such sums paid from licenses and fees apart for the credit of such fund, subject to the orders and disbursement hereinafter provided for.

The money in such fund can only be paid out on a warrant signed by the secretary of said board, countersigned by the president, and the members of the said board shall report annually to the governor on the first Monday of January of each year, which report must show all the transactions of the board, giving the number and names of all applicants, and the number and names of those rejected, and those to whom certificates have been issued, the expenses, the fees and mileage paid, the amount of money received, and the amount of money remaining in said fund.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921.

3238. Annual fee of licensed architects. Every licensed architect in the state who desires to continue the practice of his profession shall annually, during the time he or she shall continue in such practice, pay to the treasurer of the state of Montana, during the month of July, a fee of ten dollars.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R. C. M. 1921.

3239. Architects removing from state to be granted demit. A licensed architect removing from the state may receive a demit from the board of architectural examiners, and if he desires to re-establish himself in the state,

the board will issue a certificate to him without examination; provided, however, he shall pay the regular license fee.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R. C. M. 1921.

3240. Revocation of license. The board of architectural examiners may revoke any license for gross incompetency or recklessness in the construction of buildings, or fraud, but the holder of such license shall receive twenty days' notice of the day of hearing and determining of charge against him.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R. C. M. 1921.

3241. Repealed—Chapter 46, laws of 1933.

CHAPTER 278

PUBLIC ACCOUNTING—REGULATION OF PRACTICE

- Section 3241.1. Certified public accountants—issuance of certificate without examination—examination—qualifications of applicants.
- 3241.2. Admission of certified public accountants from other states.
- 3241.3. Board of examiners in accountancy—appointment—term.
- 3241.4. Rules and regulations to be prescribed by university.
- 3241.5. Time of examinations—notice.
- 3241.6. Fee for examination and certificate—re-examination.
- 3241.7. Cancellation of certificate—grounds—hearing—investigations.
- 3241.8. False statements by accountants—misdemeanor—penalty.
- 3241.9. Annual license fee—declaration of university.
- 3241.10. Unauthorized practice as certified public accountant—penalty—"public accountant" and "certified public accountant" defined.
- 3241.11. Priorly issued certificates not affected.
- 3241.12. Disposition of funds—expenses of board, how paid.

3241.1. Certified public accountants—issuance of certificate without examination—examination—qualifications of applicants. Any citizen, or person who has bona fide declared his intention to become a citizen of the United States, over the age of twenty-one years, of good moral character, and who possesses the qualifications of learning, ability, experience and residence hereinafter provided, is entitled to admission as a certified public account of this state. All persons are certified public accountants of this state who are now entitled to practice as certified public accountants therein, and every person is entitled to be certified by the state university of Montana (hereinafter referred to as the university) as a certified public accountant who shall have been engaged in public accounting or auditing exclusively and continuously for at least five years before making application to the university for a certificate as a certified public accountant, and who shall produce satisfactory evidence of good moral character, is a graduate of a high school having a four-year course, or possessed of an equivalent education, and is a resident of the state of Montana for at least one year immediately preceding the date of his application. The university is hereby directed to issue to such person a certificate entitling him to practice as a certified public accountant, and to employ the title of "certified public accountant" or the abbreviation "C. P. A." Any person employed by the state of Montana as state accountant, corporation license tax auditor or/and income tax supervisor, state examiner, or assistant or deputy state examiner, shall be deemed to be engaged in public accounting or auditing. Any person who has not been engaged in public accounting or

auditing exclusively and continuously for at least five years and who desires to receive a certificate entitling him to practice as a certified public accountant must submit to and successfully pass a written examination at the hands of the board of examiners in accountancy in the subjects of auditing, accounting and commercial law as affecting accountancy, together with such other related subjects as the university may designate. Such person must be a citizen of the United States or have declared his intention to become a citizen of the United States, a resident of the state of Montana at least one year, a graduate of a high school having a four-year course or be possessed of an equivalent education, and produce satisfactory evidence of good moral character at the time he makes application to take such examination.

History: En. Sec. 1, Ch. 46, L. 1933; amd. Sec. 1, Ch. 90, L. 1935.

3241.2. Admission of certified public accountants from other states.

Every person who is a citizen of the United States or who has bona fide declared his intention to become a citizen of the United States, who has been a resident of the state of Montana at least one year, and who is the holder of a valid certificate as certified public accountant, issued by another state where the requirements entitling him to practice as such certified public accountant are substantially equivalent to those of this state, may be admitted to practice as a certified public accountant in this state upon the production of his certificate and satisfactory evidence of good moral character; but the university may examine the applicant as to his qualifications, and if it finds the applicant qualified, it may issue a certificate in such form as to clearly indicate the conditions under which the same was issued.

History: En. Sec. 2, Ch. 46, L. 1933; amd. Sec. 2, Ch. 90, L. 1935.

References

Roberts et al. v. Hosking et al., 95 M 562, 563, 28 P 2d 199.

3241.3. Board of examiners in accountancy—appointment—term.

For the purpose of determining the qualifications of persons applying for examination, under the provisions of section 3241.1, the state board of education shall appoint a board of examiners in accountancy, consisting of three members, each of whom shall possess a certificate as certified public accountant issued under the authority of this act. The members first appointed on the board hereunder shall hold their offices until July 1st, 1935. The members subsequently appointed on the board shall hold their offices for the period of one year, and until their successors are appointed and qualified.

History: En. Sec. 3, Ch. 46, L. 1933; amd. Sec. 3, Ch. 90, L. 1935.

3241.4. Rules and regulations to be prescribed by university. The university shall prescribe all useful and necessary rules and regulations for the conduct, character and scope of the examinations, the methods and time of filing applications therefor, and all other rules and regulations necessary or proper, fully to carry into effect the purposes of this act.

History: En. Sec. 4, Ch. 46, L. 1933.

3241.5. Time of examinations—notice. The board of examiners in accountancy shall hold examinations at the university at Missoula, Montana, or at the state capitol, in Helena, Montana, as often as in the opinion of the university shall be necessary, but in no event less frequently than once

each year. Thirty days' notice of the time and place of holding such examination shall be given by advertisement published once a week for three successive weeks prior to the date thereof, in three daily newspapers, no two of which shall be published in the same county.

History: En. Sec. 5, Ch. 46, L. 1933.

3241.6. Fee for examination and certificate—re-examination. The university shall be entitled to receive for the examination and certificate, provided for in section 3241.1, a fee of twenty-five dollars, payable in advance at the time of making application therefor. Any applicant who shall fail to pass an examination shall be entitled to further examinations within the next two succeeding years following such failure, but at such times only as the board of accountancy shall hold the regular examination, prescribed in section 3241.5. Such applicant shall not be entitled to more than one examination in each year, providing, that for each additional examination, after the failure of such applicant to pass, a fee of five dollars shall be paid by said applicant for each additional examination.

History: En. Sec. 6, Ch. 46, L. 1933.

3241.7. Cancellation of certificate—grounds—hearing—investigations. The university may cancel any certificate issued under the provisions of this act for unprofessional conduct or other sufficient cause; provided, that written notice shall have been forwarded by registered mail at least twenty days prior to any hearing thereon, addressed to the holder of such certificate at his last known address, and appointing a date for a full hearing thereon by the university; and provided, further, that no certificate shall be revoked until after a hearing shall have been had. The university shall establish such rules and regulations for the conduct of such hearings as to it may appear necessary and proper, and in its discretion may appoint a commission of disinterested persons to take evidence and prepare and submit findings and recommendations.

History: En. Sec. 7, Ch. 46, L. 1933.

3241.8. False statements by accountants—misdemeanor—penalty. Any person practicing as an "accountant," "public accountant," "auditor," or "certified public accountant," in this state, who, because of negligence, gross inefficiency, or wilfulness, shall issue, or permit the issuance of any false statement of the financial transactions, standing or condition of any corporation, partnership, or individual business undertaking, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five hundred dollars nor more than two thousand dollars, or imprisoned for a period of not less than ninety days nor more than one year, or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 8, Ch. 46, L. 1933.

3241.9. Annual license fee—declaration of university. On application by the holder of a certificate of "certified public accountant," issued under the laws of this state, on or before December 31st of each year, filed with the university, together with the payment of an annual license fee of five dollars, the applicant's name shall be registered by the university and included in a declaration, which shall be issued annually by the University,

containing a copy of this law and an alphabetical list of such accountants as have so registered, their certificate numbers and their addresses, but nothing in this section contained shall operate to cancel any certificate of any certified accountant otherwise in good standing.

History: En. Sec. 9, Ch. 46, L. 1933.

3241.10. Unauthorized practice as certified public accountant—penalty —“public accountant” and “certified public accountant” defined. Any person who shall represent himself as having received a certificate, as provided in this act, or under the provisions of chapter 231, of the revised codes of Montana, 1921, or who shall offer to or attempt to practice as a certified public accountant, or chartered accountant, or who shall employ the abbreviation “C. P. A.” or “C. A.,” or any similar words or letters to indicate that he is a certified public accountant, or chartered accountant, without having been granted a certificate as such by the university or under the laws of another state; or who, having received a certificate as certified public accountant under the laws of this or another state, shall have lost the same by revocation or annulment and who shall continue to practice as a certified public accountant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than one thousand dollars, or imprisoned for a period of not less than ninety days nor more than one year, or subjected to both said fine and imprisonment, in the discretion of the court.

A “public accountant” is one who offers his services professionally for pay to the general public; and a “certified public accountant” is one who shall have received a certificate as such under this law or prior laws of the state of Montana, or some other state.

History: En. Sec. 10, Ch. 46, L. 1933. They were repealed by Ch. 46, L. 1933,

NOTE—Chapter 231, above referred (sections 3241.1 to 3241.12 of this code.) to, was sections 3241-3251 of the 1921 code.

3241.11. Priorly issued certificates not affected. Provided, however, that nothing in this act contained shall nullify, invalidate or otherwise affect any certificate as certified public accountant heretofore issued by the university under the provisions of prior acts.

History: En. Sec. 11, Ch. 46, L. 1933.

3241.12. Disposition of funds—expenses of board, how paid. All funds received under this act, or under or by virtue of prior accountancy laws shall be received by the university and paid into the board of accountancy fund.

The members of the board of examiners in accountancy shall receive their actual traveling and hotel expenses incurred while engaged in the performance of their duties, as imposed upon them by this act, but shall receive no other compensation. Such expenses, together with the expense of preparing and issuing certificates, publishing notices of examinations, and all other expenses arising from the administration of this act shall be paid by the university from the fees received from applicants. In no event shall any expenses arising from the administration of this act become a charge against the funds of the university or the state of Montana.

History: En. Sec. 12, Ch. 46, L. 1933.

3242-3251. Repealed—Chapter 46, laws of 1933.

CHAPTER 279

LAW—REGULATION OF PRACTICE

Section 3252. Practice of law.

3252. Practice of law. The practice of law is regulated by sections 8936 to 8973 of the code of civil procedure.

History: New section recommended by code commissioner, 1921.

CHAPTER 280

REGULATION OF LIVESTOCK INDUSTRY—THE LIVESTOCK COMMISSION

Section 3253. Livestock commission—appointment, qualifications, and term of office of members—vacancies.

3254. Compensation of members.

3255. Organization of board—secretary and other employees—powers of board.

3256. Duties and powers of commission.

3257. Duty of commission to audit and certify bills for expenses—warrants—livestock commission fund.

3258. Annual report of commission.

3259. Sections repealed—transfer of powers.

3253. Livestock commission—appointment, qualifications, and term of office of members—vacancies. Upon the passage and approval of this act, the board of stock commissioners and the board of sheep commissioners shall be consolidated, and their powers and duties, except as herein modified, shall be exercised by a board to be known as the livestock commission, which said board is hereby created, to be composed of six members, each of whom must be, at the time of his appointment, a resident of the state of Montana and the owner of cattle, sheep, or horses in the said state. The governor is hereby authorized and empowered to appoint, by and with the consent of the senate, the members of the said livestock commission. Upon the approval of this act, the governor shall appoint two members of the said livestock commission to hold office for a term of two years; and two members to hold office for a term of four years; and two members to hold office for a term of six years, from and after the first day of March, 1917, respectively, and thereafter the members of the said livestock commission so appointed by the governor shall hold office for the term of six years from and after the appointment, and until their successors are appointed and qualified. In the case of death, resignation, or removal of a member, the governor shall appoint to fill the vacancy thus occasioned. Each of the members, before entering upon his duties, must take and file with the secretary of state the constitutional oath of office.

History: The board of stock commissioners was created by act of March 12, 1885, amended by act of March 9, 1887, appearing as sections 32 to 46, 5th Division Compiled Statutes, 1887. The composition of the board was changed by section 1, p. 177, Laws of 1897 and the law governing it was amended by sections 2950 to 2957, Political Code 1895. The foregoing sections appeared as sections

1782 to 1789, Revised Codes 1907, including amendment by chapter 50, Laws of 1903. The board of sheep commissioners was created by act of May 5, 1897; Laws of 1897, p. 99, section 102; amended by chapter 45, Laws of 1905, appearing as sections 1854 to 1859 et seq., Revised Codes 1907.

En. Sec. 1, Ch. 51, L. 1917; re-en. Sec. 3253, R. C. M. 1921.

3254. Compensation of members. The members of the livestock commission shall receive no compensation for their services, but shall be allowed their actual expenses for and while attending meetings, such expenses to

be audited, allowed, and paid as in the case of other expenditures of the said commission.

History: En. Sec. 2, Ch. 51, L. 1917; re-en. Sec. 3254, R. C. M. 1921.

3255. Organization of board—secretary and other employees—powers of board. The commission shall organize by electing one of its members president, and one of its members vice-president. It shall also have power to appoint a secretary and fix his salary, and appoint such other agents and employees as may be necessary for the proper conduct of the business of the commission. They shall have power to adopt, subject to the approval of the governor, by-laws and rules and regulations for the government and conduct of the business of the commission. The secretary shall be the general recorder of marks and brands.

History: En. Sec. 3, Ch. 51, L. 1917; re-en. Sec. 3255, R. C. M. 1921.

3256. Duties and powers of commission. It shall be the duty of the livestock commission to exercise general supervision over, and, so far as possible, protect the livestock interests of the state from theft and disease, and recommend from time to time such legislation as will, in the judgment of the commission, foster this industry. The commission shall have power to procure all necessary and lawful process for the attendance of witnesses, and to employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and to assist in any lawful way in the prosecution of any persons charged with any offenses against the laws of the state in feloniously branding or stealing live stock, or any other crime or misdemeanor under any of the laws of the state for the protection of the rights and interests of the stock owners. It shall also have power to make rules and regulations governing the recording and use of livestock brands.

History: En. Sec. 4, Ch. 51, L. 1917; re-en. Sec. 3256, R. C. M. 1921.

Power of Representing Attorney

An attorney who represents the state

board of stock commissioners has the right to appear in aid of the prosecution of one accused for grand larceny in having stolen live stock. *State v. Biggs*, 45 M 400, 403, 123 P 410.

3257. Duty of commission to audit and certify bills for expenses—warrants—livestock commission fund. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties entitled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund, which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 2079 of this code, and other funds hereafter appropriated for the support and maintenance of the said commission.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921.

3258. Annual report of commission. The commission must make an annual report in writing to the governor on the first day of December of all its transactions for the year.

History: En. Sec. 6, Ch. 51, L. 1917; re-en. Sec. 3258, R. C. M. 1921.

3259. Sections repealed—transfer of powers. Sections 1782, 1783, 1784, 1785, 1786, 1787, 1788, and 1789 of the revised codes of Montana of 1907, relating to the board of stock commissioners, and sections 1854, 1855, 1856, 1857, 1858, 1859, 1860 and 1861 of the revised codes of Montana of 1907, relating to the board of sheep commissioners, and all other acts or parts of acts in conflict herewith, are hereby repealed; provided, however, that all powers conferred and duties imposed upon the board of stock commissioners and the board of sheep commissioners by statutes other than those in this section mentioned shall be hereafter imposed and conferred upon and exercised by the livestock commission created hereby.

History: En. Sec. 7, Ch. 51, L. 1917; re-en. Sec. 3259, R. C. M. 1921.

CHAPTER 281

THE LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON— QUARANTINE, INSPECTION AND DESTRUCTION OF DISEASED STOCK

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3260. Creation livestock sanitary board. In addition to the powers and duties now conferred on the livestock commission, the members thereof shall constitute the livestock sanitary board. Meetings of the livestock sanitary board shall be held upon call of the chairman or executive officer,

or of any three members; a majority of the board shall constitute a quorum for the transaction of business; and the chairman of the livestock commission shall act as chairman of the livestock sanitary board. The members of the livestock commission shall receive no compensation for acting on said board, but they shall receive their actual and necessary traveling and subsistence expenses while in attendance upon and in going to and from board meetings.

History: The livestock sanitary board was created by chapter 152, Laws of 1907, appearing as sections 1884 to 1903, Rev. C. 1907. This act, together with sections 1862 to 1880, Rev. C. 1907, being part of chapter 45, Laws of 1905, dealing with the inspection of sheep, was repealed by chap-

ter 157, laws of 1917, as were also chapter 146, Laws of 1911; chapters 68, 90 and 123, Laws of 1913, and chapters 9, and 140, laws of 1915. All the above laws were superseded by the act given here.

En. Sec. 1, Ch. 262, L. 1921; re-en. Sec. 3260, R. C. M. 1921.

3261. Verification and approval of claims. All claims against the board must be verified by oath of claimant, or his agent with knowledge of the facts, and be approved by the state board of examiners before payment.

History: En. Sec. 2, Ch. 262, L. 1921; re-en. Sec. 3261, R. C. M. 1921.

3262. Veterinary surgeon—appointment and qualifications. The board shall appoint a chief executive officer, who shall act as the state veterinary surgeon. He must be a graduate of a regular and reputable veterinary college, or of the veterinary department of a regular and reputable university, and he must be licensed to practice veterinary medicine in the state of Montana.

History: En. Sec. 3, Ch. 262, L. 1921; re-en. Sec. 3262, R. C. M. 1921.

3263. Same—duties. The state veterinary surgeon shall be the executive officer of the livestock sanitary board, and shall act as its secretary; and, subject to the rules and regulations of the board, he shall have power to act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board at its next, or any subsequent meeting.

History: En. Sec. 4, Ch. 262, L. 1921; re-en. Sec. 3263, R. C. M. 1921.

3264. Appointment of inspectors and deputies. The state veterinary surgeon may, by and with the consent of the livestock sanitary board, appoint inspectors, deputy veterinary surgeons, and other agents and assistants, whose duties it shall be to act under the directions of the state veterinary surgeon and the livestock sanitary board. Such deputy veterinary surgeons must be graduates of a regular and reputable veterinary college, or of the veterinary department of a regular and reputable university.

History: En. Sec. 5, Ch. 262, L. 1921; re-en. Sec. 3264, R. C. M. 1921.

3265. Appointment of federal veterinary inspectors. By and with the consent of the livestock sanitary board, together with the approval of either the federal veterinary inspector in charge in the state of Montana, or the chief of the United States bureau of animal industry, the state veterinary surgeon may appoint federal veterinary inspectors stationed in this state, as deputy veterinary surgeons under this act, and by and with such

consent and approval, federal lay inspectors stationed in this state may likewise be appointed agents for the livestock sanitary board. All such federal officers so appointed as deputies or agents of the livestock sanitary board shall possess the powers and duties of deputy state veterinary surgeons or agents of the livestock sanitary board, as the case may be, but they shall act without compensation and hold office only at the pleasure of the livestock sanitary board.

History: En. Sec. 6, Ch. 262, L. 1921; re-en. Sec. 3265, R. C. M. 1921.

3266. Authority of veterinary surgeon and agents. In the performance of their official duties, the state veterinary surgeon, and any other agent or officer of the livestock sanitary board shall be, and are hereby, authorized and empowered to enter upon or into any lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products, intended for sale or disposal as food or whereon or wherein may be found any livestock affected with, or which has been exposed to, or which such officer has reason to believe is either affected with, or has been exposed to, an infectious, contagious, communicable or dangerous disease, or disease-carrying insects.

History: En. Sec. 7, Ch. 262, L. 1921; re-en. Sec. 3266, R. C. M. 1921.

3267. Powers of livestock sanitary board. The livestock sanitary board shall have power:

1. To supervise and control the action of the state veterinary surgeon, all deputies, inspectors, and other employees, and to prescribe their duties, compensation, and tenure of office.

2. To remove any one or more of its appointees, subordinates, and employees at any time for cause.

3. To supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and such reasonable rules and regulations as this board may from time to time promulgate, and to this end this board shall have power to quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state, which is or may be used or occupied by livestock, and which, in the judgment of the state veterinary surgeon, or of his authorized agent, is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which such disease may be communicated; and this board shall have power to quarantine any livestock in this state, whenever, in the judgment of the state veterinary surgeon, or of his authorized agent, such livestock is affected with, or has been exposed to such disease or disease-carrying medium; and this board shall have power to prescribe treatments and enforce sanitary regulations which, in the judgment of the state veterinary surgeon, or of his authorized agent, are reasonable, necessary, and proper to circumscribe, extirpate, control, or prevent such diseases.

4. To foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases, or to the care of

livestock and its products; and to this end to establish and maintain a laboratory, and to make, or cause to be made, biologic products, curatives, and preventative agents; and to do or perform such other acts and things as in their judgment may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state.

5. To promulgate and enforce such reasonable rules, regulations, and orders as they may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock into this state, and to this end to promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper governing inspections and tests of all livestock intended for importation into this state, before it may be imported into this state.

6. To promulgate and enforce such reasonable rules, regulations, and orders as they may deem necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state.

7. To promulgate and enforce such reasonable rules, regulations and orders, as may to them seem necessary or proper for the supervision, inspection and control of the standards and sanitary conditions of slaughter-houses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat, or meat foods, milk or its products, or any thereof intended for sale or consumption as food are produced, kept, handled, or stored; and for the purposes of this act they, or any duly authorized representative of said board, may take samples of any such product or products, so produced, kept, handled, or stored, for analysis or testing by the livestock sanitary board chemist or bacteriologist or the state chemist, and the records of such samples and their analysis and test, when identified as to the sample by the oath of the officer taking the same, and verified, as to the analysis or test, by the oath of such chemist or bacteriologist making the same, shall be prima facie evidence of the facts therein set forth, when offered in evidence in any prosecution or action at law or in equity for violation of the provisions of this act, or any rule, regulation or order of said board, made in pursuance to this act, provided that the standards referred to in this subsection 7, in so far as they relate to dairies or milk and its by-products, shall not be deemed to include standards of weight or measurement.

8. To promulgate and enforce such reasonable rules, regulations, and orders as may to them seem necessary or proper for the supervision and control of manufactured and refined foods for livestock, and the manufacture, importation, sale, and method of using any biologic remedy or curative agent for the treatment of diseases of livestock; provided, however, that as far as practicable the standards approved by the United State department of agriculture shall be adopted.

9. To install an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules and regulations which may provide fees for the maintenance of such inspection, and which shall provide ways and means for shipping home-grown and home-killed meats into any city in Montana. As far as practicable, such rules

and regulations shall conform with the meat-inspection requirements of the United States bureau of animal industry.

10. To slaughter, or cause to be slaughtered, any or all livestock in this state known to be affected with, or which has been exposed to, an infectious, contagious, communicable, or dangerous disease, when, in the opinion of the state veterinary surgeon, or of a deputy veterinary surgeon, such slaughter is necessary for the protection of other livestock; and to destroy, or cause to be destroyed, all barns, stables, sheds, out-buildings, fixtures, furniture, and personal property infected with any such infectious, contagious, communicable, or dangerous disease, when, in the judgment of the state veterinary surgeon or his authorized agent, the same cannot be thoroughly cleaned and disinfected, and in the judgment of that officer, or his authorized agent, such destruction is necessary to prevent the spreading of such disease.

11. To indemnify the owner of any property destroyed by order of this board, or its authorized representatives, under the provisions of this act, or any rules, regulations, or orders promulgated by this board in pursuance of this act.

12. To require persons, firms, and corporations engaged in the production or handling of meat or meat-food products, or dairy products or any thereof, to furnish statistics of the quantity and cost of such food and food products produced or handled, and the name and address of person or persons supplying them any of such products.

History: En. Sec. 8, Ch. 262, L. 1921; re-en. Sec. 3267, R. C. M. 1921.

3267.1. Poultry industry—powers and authority of livestock sanitary board. For the promotion and protection of the poultry industry, and to prevent, control, and exterminate infectious, contagious, dangerous and destructive diseases affecting poultry, the livestock sanitary board shall have power and it shall be its duty:

1. To supervise the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state, and such reasonable rules and regulations as this board may from time to time promulgate, and to this end this board shall have power to quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state, which is or may be used or occupied by poultry, and which, in the judgment of the state veterinary surgeon, or of his authorized agent, is infected or contaminated with an infectious, contagious, communicable or dangerous disease, or disease carrying medium by which such disease may be communicated; and this board shall have power to quarantine any poultry in this state, whenever, in the judgment of the state veterinary surgeon, or his authorized agent, such poultry is affected with, or has been exposed to, such disease or disease carrying medium; and this board shall have power to prescribe treatments and enforce sanitary regulations which, in the judgment of the state veterinary surgeon, or of his authorized agent, are reasonably necessary and proper to circumscribe, extirpate, control or prevent such diseases.

2. To foster, promote and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and

means of preventing, controlling, and exterminating diseases of poultry, to promulgate and enforce reasonable rules and regulations for the prevention and extermination of such diseases, and to do or perform such other acts and things as in their judgment may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state.

3. To promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting poultry into this state, and to this end to promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state.

4. To promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper for the inspection, testing and quarantine of all poultry imported into this state.

History: En. Sec. 1, Ch. 161, L. 1929.

3267.2. Violation constitutes misdemeanor. Any person, persons, firm, or corporation violating any provision of this act, or any rule, regulation, or order promulgated by authority of the same or who shall obstruct or interfere with the performance of any duty, or the exercise of any power hereby conferred shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 161, L. 1929.

3268. Promulgation of rules. It shall be the duty of the livestock sanitary board to promulgate and enforce rules and regulations for the inspection and tuberculin test of all dairy cattle, or other animals, and for the inspection, test, treatment, or disposition of all livestock affected with, or which may have been exposed to, any infectious, contagious, communicable, or dangerous disease, and for the quarantines provided for in this act.

History: En. Sec. 9, Ch. 262, L. 1921; re-en. Sec. 3268, R. C. M. 1921.

3269. Sale of carcasses unsanitarily slaughtered or handled. It shall be unlawful for any person, firm, or corporation to sell as food for human beings, or to hold or possess as human food intended for sale, the carcass or part of carcass of any animal slaughtered under unsanitary conditions, or which carcass or part of carcass has been prepared, handled, or kept under unsanitary conditions; and it shall be the duty of the livestock sanitary board to see that the provisions of this section are enforced.

History: En. Sec. 10, Ch. 262, L. 1921; re-en. Sec. 3269, R. C. M. 1921.

3270. Authority of municipal corporations. Nothing in this act shall prevent the governing authority of any municipal corporation from enacting or enforcing ordinances providing for the inspection of slaughterhouses, meat depots, meat markets, meat-food products, creameries, butter or cheese factories, dairies, and dairy products, sold or offered for sale within the limits of such municipal corporation; but no such ordinance shall be enforced in conflict with the powers of this act delegated to the livestock sanitary board, its officers or agents.

History: En. Sec. 11, Ch. 262, L. 1921; re-en. Sec. 3270, R. C. M. 1921.

3271. Classification of animals as to compensation for slaughter. Animals with reference to compensation for slaughter by direction of the livestock sanitary board, or an agent thereof, under the provisions of this act, shall be divided into two classes, to-wit:

1. Animals determined by the state veterinary surgeon, or by a deputy veterinary surgeon, to be affected with an incurable disease, which are killed by order of such officer, shall be designated as animals of class one, and, unless otherwise herein provided, each of such animals shall be paid for on a basis of seventy-five per cent. of its full assessed valuation, as such full assessed valuation is fixed on the completion of the assessment-roll on the second Monday in the month of August next preceding the killing, by the tax-assessment records of the county liable in part for any indemnity to be paid. The county in which such animal was last assessable for tax purposes in this state, or if such animal has not been assessable for taxes in this state, the county in which such animal was located at the time it was condemned, shall be liable in part, as hereinafter provided, for any indemnity to be paid for such animal; provided, the total amount of indemnity to be paid from all sources for any such animal shall not exceed the actual sound value of an animal of its class; and provided further, that the total amount of indemnity to be paid for such animal from all sources shall not exceed the sum of three hundred dollars for any pure bred animal, or the sum of one hundred dollars for any grade animal.

2. Animals of class one shall be paid for on a basis of their full assessed valuation, as herein determined, in event no evidence of such incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings; provided, the total amount of indemnity paid from all sources for any such animal shall not exceed the actual sound value of an animal of its class; and provided further, that the total amount of indemnity to be paid from all sources for such animal shall not exceed five hundred dollars for any pure bred animal, or one hundred and fifty dollars for any grade animal.

3. Animals determined by the state veterinary surgeon, or by a deputy veterinary surgeon, to be affected with or exposed to an infectious, contagious, communicable, or dangerous disease which is not of its nature necessarily fatal, which animals are killed by order of such officer as a sanitary safeguard, shall be designated as animals of class two, and unless otherwise herein provided, each of such animals shall be paid for on the basis of its full assessed value as such full assessed value is determined by the method outlined hereinabove in this section; provided, the total amount of indemnity paid from all sources for any such animal shall not exceed the actual sound value of an animal of its class; and provided further, that the total amount of indemnity to be paid for such animal from all sources shall not exceed five hundred dollars for any pure bred animal, or the sum of one hundred and fifty dollars for any grade animal.

4. Where an animal killed by order of the board, or of its agent, does not appear on the last assessment-roll of the county liable for indemnity, then its assessed valuation herein referred to as a basis for indemnity

shall be equal to the minimum assessed valuation for animals of the class and age such animal would have been at the last past assessment time in the county.

5. Animals destroyed but too young to have been assessed at the time of assessment shall be appraised by the state veterinary surgeon, or his authorized agent, and paid for according to that appraised value, but the total claim from all sources shall in no case exceed twenty-five dollars for a grade calf and fifty dollars for a pure bred calf, and thirty-five dollars for a grade yearling, and one hundred dollars for a pure bred yearling. In case of controversy the appraisement of the state veterinary surgeon shall be final, with no recourse, and the owner or agent shall be liable for the actual traveling expenses of the state veterinary surgeon in making such appraisement.

6. Animals which may be injured or killed while they are being inspected or tested in accordance with an order of the livestock sanitary board, and which animals do not come within either class one or class two as herein provided, may be paid for at their full assessed valuation, or in accordance with subdivision 5 of this section, when the claim therefor is recommended for payment at a meeting of the livestock sanitary board and is approved by the state board of examiners, and where it is shown that the injury or death of such animal was not proximately due to the negligence of the owner or his agent. The whole of such claim when so approved shall be paid out of the livestock sanitary board funds; provided, however, that the limit of compensation for such animal from all sources shall not exceed that fixed by this act for animals of class two.

History: En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R. C. M. 1921.

3272. Payment for other personal property. Personal property, other than livestock, destroyed by order of the livestock sanitary board, or an authorized representative thereof, shall be paid for on the basis of its full assessed valuation; such full assessed valuation to be determined in the manner specified in the preceding section for the determination of the assessed valuation of animals.

History: En. Sec. 13, Ch. 262, L. 1921; re-en. Sec. 3272, R. C. M. 1921.

3273. Indemnity—from what funds paid. In payment for animals or property destroyed by order of the livestock sanitary board, the state shall pay one-half of such indemnity out of any moneys at the disposal of the livestock sanitary board, and the county liable in part for the indemnity, as such county is determined by this act, shall pay the one-half part of such total indemnity out of the general fund of the county.

History: En. Sec. 14, Ch. 262, L. 1921; re-en. Sec. 3273, R. C. M. 1921.

3274. Presentation of claims for indemnity. Claims against the state and any county thereof, arising from the destruction of animals or property destroyed by order of the livestock sanitary board, shall be made upon official forms, which must contain an affidavit by the owner, or his agent with knowledge of the facts, of such animal or property, that such animal or animals have been killed and buried, and the property destroyed, in accordance with the law and regulations of the livestock

sanitary board; and such claims must be accompanied by a certificate from the state veterinary surgeon, or his authorized deputy or agent, that such animal or animals, or property (as the case may be) were ordered destroyed. Such claims shall likewise be accompanied by the certificate of the county assessor of the county liable in part for the indemnity, setting forth the full assessed value of animals or property (as the case may be) destroyed, as shown by the records of his office on the completion of the tax-roll the second Monday in August last preceding the date of the killing or destruction.

History: En. Sec. 15, Ch. 262, L. 1921; re-en. Sec. 3274, R. C. M. 1921.

3275. Examination and payment of claims. Claims against the state arising under this act, and when passed by the board of examiners, shall be examined by the state auditor, and if found correct, he shall issue a warrant upon the state treasurer for the amount payable by the state and charge the same to any funds or account at the disposal of the livestock sanitary board.

History: En. Sec. 16, Ch. 262, L. 1921; re-en. Sec. 3275, R. C. M. 1921.

3276. Same—payment from county funds. The board of county commissioners of the county liable in part for the indemnity for any such animal or property destroyed shall cause to be paid the amount due from said county out of the general funds of the county.

History: En. Sec. 17, Ch. 262, L. 1921; re-en. Sec. 3276, R. C. M. 1921.

3277. Sale of condemned carcasses—disposal of proceeds. Where carcasses of animals ordered destroyed under this act are found, upon post-mortem inspection (which inspection must be made in accordance with the regulations of the livestock sanitary board by a state or federal veterinarian) fit for human consumption, the owner may receive the net proceeds from the sale of such carcass and shall have no further claim against the state or county on account of such slaughter. Should the owner refuse to accept this salvage in full settlement for the destruction of the animal, then the representative of the livestock sanitary board may proceed to sell the carcass, upon such terms as shall to him seem to the best interests of the state, and the net proceeds obtained therefrom shall be paid, fifty per cent. to the livestock sanitary board fund and fifty per cent. to the treasurer of the county liable in part for the indemnity to be paid for such animal.

History: En. Sec. 18, Ch. 262, L. 1921; re-en. Sec. 3277, R. C. M. 1921.

3278. Persons entitled to indemnity. The owner of any animal or property destroyed, as provided in this act, shall be entitled to indemnity therefor as herein provided, except in the following cases:

1. Animals belonging to the United States.
2. Animals brought into the state violating any provisions of this act, or regulations of the livestock sanitary board.
3. Animals which the owner or claimant knew to be diseased, or had notice thereof at the time they came into his possession.
4. Animals which had the disease for which they were slaughtered, or which were destroyed by reason of exposure to such disease, at the

time of their arrival in the state; providing, however, that any animal or animals of the second class which were shipped into the state of Montana in accordance with the livestock sanitary board regulations, and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when such payment is authorized at a meeting of the livestock sanitary board and approved by the state board of examiners.

5. Animals which have not been within the state of Montana for at least one hundred and twenty days prior to the discovery of the disease; provided, that animals of the second class which have not been in the state one hundred and twenty days may be paid for when such payment is authorized at a meeting of the livestock sanitary board and approved by the state board of examiners.

6. When the owner or agent has not used reasonable diligence to prevent disease or exposure thereto.

7. When the owner or agent has not complied with the rules and regulations of the livestock sanitary board with respect to animals condemned.

8. No compensation or indemnity will be paid for the destruction of any livestock affected with tuberculosis, or other infectious, contagious, communicable, or dangerous disease, unless the entire herd or band of which such affected livestock is a part shall be under the supervision of the livestock sanitary board for the eradication of such disease.

9. When animals condemned are not destroyed within sixty days after they have been determined to be affected with or exposed to a disease which requires them to be destroyed by order of the livestock sanitary board.

History: En. Sec. 19, Ch. 262, L. 1921; re-en. Sec. 3278, R. C. M. 1921.

3279. Deduction of compensation of other indemnifying agencies. In all cases where the federal government, or agency other than the state or county, shall compensate the owner in whole or in part for the livestock or property destroyed by order of the livestock sanitary board, then the amount of such compensation from the federal government, or other agency, shall be deducted from the amount of compensation or indemnity provided herein for such animal or property destroyed; and provided further, that where the owner or agent of such livestock or property destroyed by order of the livestock sanitary board, shall forfeit any indemnity which the owner would otherwise be entitled to from the federal government, or other compensating agency than the state or county, by violation of the regulations of the federal government, or other agency, than and in such case an amount equal to the indemnity which would have been paid, but for the forfeiture, by the federal government, or other indemnifying agency, shall likewise be deducted from the payment required by this act from the state and county for the destruction of such animal or property.

History: En. Sec. 20, Ch. 262, L. 1921; re-en. Sec. 3279, R. C. M. 1921.

3280. Expenses how paid—lien and foreclosure. The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of livestock by the livestock sanitary board, under the provisions of this act, and the

sanitary inspection of dairies, packing houses, meat depots, slaughter houses, milk depots, and other premises as provided in this act, shall be paid for by the livestock sanitary board out of such funds as they may have at their command; provided, however, that the owner of such livestock or property shall be liable for all expenses, save the salary of the supervising officer or officers, representing this board, when such owner, agent, or person in charge of such livestock or property shall have violated the regulations of the livestock sanitary board, and such expenses shall be a lien upon the livestock or other property, and the agent of the livestock sanitary board may retain possession of the livestock until the charges and expenses are paid; but the lien shall not be dependent upon possession, and the lien may be foreclosed in the name of the agent of the livestock sanitary board by selling of the stock, or as many as may be necessary to pay the sum of the costs, by sale at public auction, and ten days' notice by posting thereof in three public places in the county, or such lien may be foreclosed by an action in any court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

History: En. Sec. 21, Ch. 262, L. 1921; re-en. Sec. 3280, R. C. M. 1921.

3281. Expense of cleaning and disinfecting carriers' facilities. The expense of cleaning and disinfection of cars, yards, or other transportation facilities of a common carrier, when required by the livestock sanitary board, shall be a charge against and collectible from such common carrier; and likewise the expense of supervising the cleaning and disinfection of cars for transportation of livestock, when required at any point other than disinfection points agreed upon between the board and the carrier, shall be a charge against and collectible from such common carrier.

History: En. Sec. 22, Ch. 262, L. 1921; re-en. Sec. 3281, R. C. M. 1921.

3282. Licensing of milk plants and dairies selling milk or cream for public consumption. It shall be unlawful for the following classes of business to operate in the state of Montana without first securing a license from the livestock sanitary board, to-wit:

1. All dairies selling milk or cream for public consumption in the form in which it is originally produced and without having been converted into some manufactured product.

2. Condensed, evaporated or powder milk plants.

3. Milk plants. A milk plant, as the term is used in this act, shall be defined as a place where milk or cream, or both, is purchased or collected and prepared for distribution to the consumer in liquid form but is not produced at such place.

The licenses herein provided for shall expire on the last day of December of the current year in which they are issued. Said licenses may be revoked at any time by the livestock sanitary board, or said veterinary surgeon when they, or he, shall determine that a person to whom the license is issued has failed to comply with the rules and regulations of the livestock sanitary board, or has failed to conduct his establishment in a sanitary manner. All licenses collected and herein provided for shall be paid into the general fund.

Dairies producing milk or cream for sale to any dairy products manufacturing plant, or dairies producing only butter, shall not be required to take out a license but shall be required to comply with all the laws of the state, and with the regulations of the livestock sanitary board governing dairies. The livestock sanitary board, or its agent, are hereby authorized to issue a restraining order prohibiting any dairy from selling or giving away any milk or cream not produced or handled in accordance with the laws of Montana, or the regulations of the livestock sanitary board. It shall be unlawful for any dairy, while so restrained, to sell or give away for public consumption any milk or cream produced or handled by such dairy and it shall likewise be unlawful for any dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while such dairy is restrained by the livestock sanitary board from selling milk or cream.

The following schedule of license fees shall be charged for all licenses issued under the provisions of this section:

Condensed, evaporated or powdered milk factories having an output of less than five hundred thousand pounds, five dollars (\$5.00).

Condensed, evaporated or powdered milk factories having an output of more than five hundred thousand pounds, twenty five dollars (\$25.00).

Milk plants, five dollars (\$5.00).

Dairies of less than twenty cows, one dollar (\$1.00).

Dairies of more than twenty cows, two and 50/100 dollars (\$2.50).

Any person, firm or corporation violating any of the provisions of this act or violating any restraining order of the livestock sanitary board herein provided for shall be guilty of a misdemeanor and upon conviction shall be punished as provided by the laws of Montana for the punishment of misdemeanors.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R. C. M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929.

3283. Exceptions of certain producers of meats and dairy products. On and after the passage and approval and effective date of this act, the owners or operators of slaughterhouses, packing houses, meat depots, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage or transportation of meats, meat foods, or dairy products, shall not be required to procure a license from the state board of health, in so far as the business of production, storage or transportation of such food products are concerned, but nothing in this act contained shall be construed to limit or conflict with the supervision or regulation of the sanitary condition of any restaurant, hotel, boarding house, or retail market, or the products sold or offered for sale thereat, by the state board of health, nor shall this act be construed to limit or conflict with the duties imposed by law on the state board of health to make and enforce sanitary regulations for the eradication or control of any epidemic of human disease which may exist in any community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R. C. M. 1921.

3284. Co-operation by public officers. It shall be the duty of the state and several local boards of health of any county, city, town, or village in this state to co-operate with and assist the livestock sanitary board in all matters relating to the execution of its sanitary powers as to livestock and their food products under this act, in such manner as may be by the livestock sanitary board prescribed, either by general regulation or direct order.

History: En. Sec. 25, Ch. 262, L. 1921; re-en. Sec. 3284, R. C. M. 1921.

3285. Slaughterhouse license—fees and renewals. It shall be unlawful for any person, firm or corporation to maintain or conduct any slaughterhouse or meat packing house or meat depot in this state without having a license issued by the livestock sanitary board. The annual fee for all licenses issued under the provisions of this section shall be one dollar and shall be paid into the general fund. All licenses shall be made to expire on the last day of December of the current year in which they are issued, and shall be renewed by said board upon request of the licensee; provided, that when the livestock sanitary board shall find that the place for which such license is issued is not conducted in accordance with the rules, regulations, and orders of said board, made and promulgated in accordance with the provisions of this act, then said board shall revoke such license and shall not renew the same until such place is put in a sanitary condition in accordance with such rules and regulations; provided, further, that all licenses now issued by the state board of health for the operation of slaughterhouses or meat packing houses or meat depots shall continue in effect for the period of said license, unless canceled by the livestock sanitary board for good cause shown.

History: En. Sec. 26, Ch. 262, L. 1921; re-en. Sec. 3285, R. C. M. 1921.

3286. Duty to report contagious diseases. Any person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock, or the presence of exposed animals to such disease, at any point within the state of Montana shall forthwith give notice thereof to the state veterinary surgeon.

History: En. Sec. 27, Ch. 262, L. 1921; re-en. Sec. 3286, R. C. M. 1921.

3287. Diseased animals not to run at large—burial of carcasses. It shall be unlawful for any owner, agent, or person in charge of any domestic animal or animals that are known to be suffering from or exposed to a dangerous, infectious, contagious, or communicable disease, to permit such animal or animals to run at large on the public range or public highway; and it shall be the duty of the owner or agent or person in charge of animals which died, or they have reason to suspect did die from an infectious, contagious, communicable, or dangerous disease, to properly bury or burn the same.

History: En. Sec. 28, Ch. 262, L. 1921; re-en. Sec. 3287, R. C. M. 1921.

3288. Penalty for violation of act. Any person, persons, firm, or corporation violating any provision of this act, or the rule, regulation, or order promulgated by authority of same, shall be guilty of a misdemeanor;

violations of this act shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R. C. M. 1921.

3289. Same—civil liability. Any person, or persons, firm, or corporation violating any of the provisions of this act or regulations or orders of the livestock sanitary board (or state veterinary surgeon), shall be liable for all damages which may be sustained by any person or persons by reason of such act or acts, which damages may be recovered by such person or persons in a civil action in any court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R. C. M. 1921.

3290. Power of board concerning oaths and witnesses. Whenever in the exercise of their powers or the discharge of their duties, it shall become necessary or proper for any member of the livestock sanitary board, the state veterinary surgeon, or authorized agent to investigate facts and conditions, they are hereby authorized to administer oaths, take affidavits and compel the attendance and testimony of witnesses.

History: En. Sec. 31, Ch. 262, L. 1921; re-en. Sec. 3290, R. C. M. 1921.

3291. Livestock sanitary board account. There shall be created the livestock sanitary board account, which, in addition to the livestock sanitary board fund, shall be used to defray all expenses of the livestock sanitary board created by this act.

History: En. Sec. 32, Ch. 262, L. 1921; re-en. Sec. 3291, R. C. M. 1921.

3292. Annual report state-veterinary surgeon. The state veterinary surgeon shall on or before the thirty-first day of December of each year make a written report to the livestock sanitary board, which report must be transmitted by them to the governor.

History: En. Sec. 33, Ch. 262, L. 1921; re-en. Sec. 3292, R. C. M. 1921.

3293. Personal liability—members and officers of board. No member of the livestock sanitary board, or any officer, agent, or employee of said board, shall be personally liable or held for any damage resulting from his official acts or decisions in pursuance of this act, or any rule, regulation, or order promulgated under this act, except it be for his own wilful wrong or gross negligence.

History: En. Sec. 34, Ch. 262, L. 1921; re-en. Sec. 3293, R. C. M. 1921.

3294. Effect of partial invalidity of act. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

History: En. Sec. 35, Ch. 262, L. 1921; re-en. Sec. 3294, R. C. M. 1921.

3295. Omitted.

3295.1. Governor may prohibit importation of animals from localities where disease exists. Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry,

or dangerous to dogs or other animals, had become epidemic in certain localities in any other state, territory, District of Columbia, or other country, he shall issue a proclamation designating such localities, and prohibiting the importation therefrom into this state, except under such restrictions as he may deem proper, of any livestock, poultry, dogs or other animals, or articles, or commodities likely to convey such disease or diseases.

History: En. Sec. 1, Ch. 31, L. 1925.

3295.2. Penalty for violation. Any person who, after the publication of such proclamation knowingly receives any livestock, dog, fowl, or other animal, or article, or commodity designated in such proclamation as likely to convey disease from any of the prohibited districts, and transports or conveys the same within the limits of this state, is punishable by imprisonment in the county jail, for not less than 60 days, nor more than 8 months, and by a fine of not less than \$300.00, nor more than \$5000.00, or by both such fine and imprisonment, and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of such proclamation.

History: En. Sec. 2, Ch. 31, L. 1925.

CHAPTER 282

SALE AND DISTRIBUTION OF TUBERCULIN

Section 3296. Tuberculin—permission for sale or distribution of.

3297. Same—report of sales or distribution.

3298. Violation of act a misdemeanor—penalty.

3296. Tuberculin—permission for sale or distribution of. Any person, firm, or corporation desiring to sell or distribute tuberculin for animal use in the state of Montana must first secure permission from the livestock sanitary board.

History: En. Sec. 1, Ch. 118, L. 1917; re-en. Sec. 3296, R. C. M. 1921.

3297. Same—report of sales or distribution. Any person, firm, or corporation, having secured permission from the livestock sanitary board to sell or distribute tuberculin for animal use within this state as prescribed in the preceding section, shall, on the same day of selling, furnishing, or supplying tuberculin, report in writing to the livestock sanitary board the name or names and address of the person or persons furnished, including a statement of the amount of tuberculin supplied.

History: En. Sec. 2, Ch. 118, L. 1917; re-en. Sec. 3297, R. C. M. 1921.

3298. Violation of act a misdemeanor—penalty. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five dollars and not more than five hundred dollars, or by imprisonment for not less than thirty days and not more than ninety days, or both fine and imprisonment.

History: En. Sec. 3, Ch. 118, L. 1917; re-en. Sec. 3298, R. C. M. 1921.

CHAPTER 283

THE MONTANA MEAT INSPECTION LAW

Section 3298.1. Montana meat inspection law.

3298.2. Inspection and grading of meat.

3298.3. Employment of experts authorized.

- 3298.4. Time for slaughtering animals.
- 3298.5. Antemortem inspection of animals—notice to refrain from slaughtering—penalty for violation.
- 3298.6. Post mortem inspection—evidence—marking of passed and condemned carcasses—disposal of condemned carcasses.
- 3298.7. Application for inspection service—numbering of establishments.
- 3298.8. Sale of inspected and marked carcasses authorized—exception.
- 3298.9. Unlawful to possess stamps of or similar to those of livestock sanitary board.
- 3298.10. Rules and regulations to be provided for execution of provisions—guidance by rules of United States department of agriculture.
- 3298.11. Unlawful to operate unsanitary slaughterhouses.
- 3298.12. Penalty for violations of provisions or regulations.
- 3298.13. Construction of act not to interfere with regulations of state board of health.
- 3298.14. Municipalities may regulate if not in conflict with act.
- 3298.15. Additional to existing statutes.

3298.1. Montana meat inspection law. This act shall be known as “the Montana meat inspection law.”

History: En. Sec. 1, Ch. 142, L. 1931.

3298.2. Inspection and grading of meat. The livestock sanitary board is hereby empowered to establish a system of meat inspection and meat grading in cities of the first class and in any other city, town, county or district when considered necessary for the public health or welfare and are given supervision over all establishments used in the business of slaughtering and preparing animals for food purposes in the state of Montana, except establishments slaughtering or preparing animals for food purposes where inspection is maintained by the bureau of animal industry of the United States department of agriculture. And the livestock sanitary board is empowered and directed at any and all times to visit any establishment, place, or premise where animals are slaughtered or prepared for food purposes, as well as all retail meat markets, meat canneries, sausage factories, curing and smoke houses, and similar places, for the purpose of determining the wholesomeness and healthfulness of animals slaughtered for food purposes, meats and meat food products intended for human consumption and the sanitary conditions of buildings, drainage, sewage, cleanliness, equipment, utensils, employees, clothing, water supply, and disposal of refuse, and the livestock sanitary board is further authorized and empowered to provide suitable rules and regulations to insure a healthful, wholesome, and safe meat supply for the state of Montana.

History: En. Sec. 2, Ch. 142, L. 1931.

3298.3. Employment of experts authorized. For the purpose of this act, the Montana livestock sanitary board is authorized to employ persons skilled in the inspection of meats and meat food products for wholesomeness and healthfulness, necessary additional employees and equipment as required, and such board is authorized to utilize and employ in the enforcement of this act any employee or agent of the Montana livestock sanitary board.

History: En. Sec. 3, Ch. 142, L. 1931.

3298.4. Time for slaughtering animals. No animal shall be slaughtered for food purposes in the state of Montana except between the hours of

five o'clock a. m. and nine o'clock p. m., unless a special permit in writing is issued by the livestock sanitary board or their authorized agent.

History: En. Sec. 4, Ch. 142, L. 1931.

3298.5. Antemortem inspection of animals—notice to refrain from slaughtering—penalty for violation. When it is deemed necessary, in order to safeguard the public health, the livestock sanitary board shall cause to be made an antemortem inspection of any cattle, sheep, swine, or other animals before being slaughtered for food purposes. Such inspection shall be made prior to slaughter and satisfactory facilities shall be provided for conducting such examinations and separating from the passed animals those deemed unfit for immediate slaughter, and if any owner or person in charge is about to slaughter for food purposes any animal or animals, which the livestock sanitary board believes may be affected with disease, said board shall notify the owner or person in charge of said animals to refrain from slaughtering them for food purposes until the previously mentioned antemortem examination shall be completed, and any owner or person slaughtering animals for food purposes after notification by the livestock sanitary board shall be guilty of a misdemeanor; provided, however, that no owner or person shall be required to refrain from slaughtering animals for a period longer than seventy-two (72) hours.

History: En. Sec. 5, Ch. 142, L. 1931.

3298.6. Post mortem inspection—evidence—marking of passed and condemned carcasses—disposal of condemned carcasses. The livestock sanitary board is authorized to provide post mortem inspection of all animals slaughtered for food purposes in any or all establishments in the state of Montana, if they deem the same necessary in order to safeguard the public health or welfare. The head, tongue, tail, thymus glands, viscera, and other parts and blood used in the preparation of meat food, meat food products, or medicinal products shall be retained in such a manner as to preserve their identity until after the post mortem examination has been completed. Carcasses and parts thereof found to be sound, healthful and wholesome after inspection, fit for human food shall be passed and may be marked in the following manner: "Mont. L. S. S. B. Inspected and Passed." This mark may also include any number given the establishment. Each carcass or part thereof which is found on post mortem inspection to be unsound, unhealthful, unwholesome, or otherwise unfit for human food shall be marked conspicuously by the inspector at the time of inspection with the words, "Mont. L. S. S. B. Inspected and Condemned," and such carcasses or parts thereof, under the supervision of the inspector, shall be rendered unfit for human consumption in a manner approved by the livestock sanitary board.

History: En. Sec. 6, Ch. 142, L. 1931.

3298.7. Application for inspection service—numbering of establishments. Any person, firm or corporation engaged in the slaughtering of cattle, sheep, swine, or other animals for food purposes, within any area designated by the livestock sanitary board where meat inspection will be established, desiring to maintain inspection service in the establishment, in

order to have the healthfulness of the meat and meat food products certified to, may make application for the inauguration for inspection service in such establishment. Such application shall be in writing addressed to the livestock sanitary board on blanks which shall be furnished by said livestock sanitary board. In such application the applicant for inspection shall agree to comply with the provisions of this act and to maintain said establishment in a clean and sanitary manner. Upon receipt of said application the livestock sanitary board shall make an inspection of said establishment and if found clean and sanitary, and properly equipped to conduct its business in accordance with the rules and regulations of the livestock sanitary board, they shall inaugurate an inspection service therein and shall give to this establishment an official number and this number shall be used to mark the meat and meat food products of the establishment as provided in this section. Such an establishment shall thereafter be known as "Official Establishment No....."

History: En. Sec. 7, Ch. 142, L. 1931.

3298.8. Sale of inspected and marked carcasses authorized—exception.

The dressed carcasses of all animals intended for human consumption, parts thereof, meats, or meat food products inspected and marked in accordance with sections 3298.5 and 3298.6 shall be permitted to be sold and offered for public consumption in the state of Montana and any subdivision thereof without restriction, except that imposed upon meat or meat food products bearing the inspection stamp of the United States department of agriculture.

History: En. Sec. 8, Ch. 142, L. 1931.

3298.9. Unlawful to possess stamps of or similar to those of livestock sanitary board. It shall be unlawful for any firm, person, or corporation, except employees of the livestock sanitary board, to have in possession, keep or use any mark, stamp or brand, similar in character or import to the mark, stamp or brand, provided or used by the livestock sanitary board for marking, stamping, or branding the carcass of any animal intended for food purposes, parts thereof, meat or meat food products, or to have in possession, keep or use any mark, stamp, or brand having thereon a device or words the same or similar in character or import to the marks, stamps, or brands provided or used by the livestock sanitary board for marking, stamping or branding carcasses of animals intended for food purposes, parts thereof, meats, or meat food products.

History: En. Sec. 9, Ch. 142, L. 1931.

3298.10. Rules and regulations to be provided for execution of provisions—guidance by rules of United States department of agriculture. The livestock sanitary board shall from time to time provide rules and regulations necessary for the efficient execution of the provisions of this act, and all inspections and examinations made under this act shall be made in such a manner as described in the rules and regulations provided by said livestock sanitary board not inconsistent with the provisions of this act; provided, however, that in such rules and regulations said livestock sanitary board shall be guided by the rules governing meat inspection of the United States department of agriculture.

History: En. Sec. 10, Ch. 142, L. 1931.

3298.11. Unlawful to operate unsanitary slaughter house. It shall be unlawful for any person, firm or corporation to maintain, or operate a slaughtering house, which is unclean or unsanitary.

History: En. Sec. 11, Ch. 142, L. 1931.

3298.12. Penalty for violations of provisions or regulations. Any person, firm or corporation engaged in the business of slaughtering and preparing animals for food purposes or preparing or retailing meats, or meat food products, or manufacturing sausage, or operating meat canneries, curing or smoking rooms, or any owner or person in charge of any animal intended for slaughter for food purposes violating any of the provisions of this act, or the rules and regulations promulgated by the livestock sanitary board for its enforcement, shall be deemed guilty of a misdemeanor, and in addition may have their inspection service discontinued by the livestock sanitary board.

History: En. Sec. 12, Ch. 142, L. 1931.

3298.13. Construction of act not to interfere with regulations of state board of health. Nothing in this act shall be construed as interfering or rescinding in any way the duties now conferred upon, or the regulations promulgated by the state board of health with reference to the inspection of meat markets or restaurants or the examination of meat products sold, possessed or offered for sale, by such meat markets or restaurants, or penalties provided for violations thereof.

History: En. Sec. 13, Ch. 142, L. 1931.

3298.14. Municipalities may regulate if not in conflict with act. Nothing in this act shall prevent the governing authority of any municipal corporation or any county from enacting or enforcing ordinances providing for the inspection of slaughter houses, the inspection of animals, meats or meat food products for human consumption but no such ordinance shall be enforced in conflict with the powers of this act delegated to the livestock sanitary board, its officers or agents.

History: En. Sec. 14, Ch. 142, L. 1931.

3298.15. Additional to existing statutes. It is expressly provided that it is the intention of this legislative assembly that the enactment of this act does not repeal or amend any of the now existing statutes relating to the establishment of a system of meat inspection or the sale, inspection, analysis or handling of meat or meat food products but is intended as additional legislation for the establishment of meat inspection and meat grading as hereby provided.

History: En. Sec. 15, Ch. 142, L. 1931.

CHAPTER 284

BUTCHERS AND MEAT PEDDLERS—REGULATION

Section 3298.16. Butcher and meat peddler defined.

3298.17. Butchers' and meat peddlers' licenses—amount of fees—disposition of moneys—penalty for failure to display license—cattle of own breeding.

3298.18. Inspection and marking of hides of slaughtered cattle—records—bill of sale to be presented, when—fee for inspection—license or inspection not necessary, when.

- 3298.19. Inspection of hides before disposal—sale without inspection.
- 3298.20. Unlawful to purchase uninspected hides or carcass—exception.
- 3298.21. Officers' authority concerning enforcement—seizure and sale of meat held in violation of act.
- 3298.22. Transportation of uninspected meat unlawful.
- 3298.23. Forfeiture of license for violations.
- 3298.24. Penalties for violation of act or falsifying records.

3298.16. Butcher and meat peddler defined. Every person, firm, corporation or association who slaughters or causes to be slaughtered neat cattle for the purpose of selling or distributing any of the meat or by-products of such cattle in this state, and who maintains slaughter houses or meat markets for this purpose, and who comply with the rules and regulations of the Montana livestock sanitary board and the state board of health, and with the city or town health ordinances where said business is operated, or any other ordinance pertaining to meat dealers, shall, for the purpose of this act, be designated a "butcher." Every other person, firm, corporation or association, who slaughters or causes to be slaughtered any neat cattle or who buys and sells any dressed beef or veal, and who does not maintain a licensed slaughter house or market, shall, for the purpose of this act, be designated a "meat peddler."

History: En. Sec. 1, Ch. 172, L. 1931.

3298.17. Butchers' and meat peddlers' licenses—amount of fees—disposition of moneys—penalty for failure to display license—cattle of own breeding. Every butcher, shall, before engaging in or conducting any business as such, in any county, pay to the county treasurer of such county a license of five dollars (\$5.00), which license shall continue in force and effect for the balance of the calendar year in which it was issued, and which shall be deemed null and void after January 1st of the succeeding year, and every meat peddler shall, before commencing or doing any business or performing any acts in any county as such meat peddler, pay to the county treasurer of such county, a license of one hundred dollars (\$100.00), which shall continue in force and effect for the balance of the calendar year in which it is issued, and which shall be deemed null and void after January 1st of the succeeding year. It shall be the duty of every meat peddler to have his license with him at all times when transacting business, and it shall be the duty of every butcher to display his license in a conspicuous place in his market. Failure to have such license shall be deemed a misdemeanor. The county treasurers of the state are hereby authorized and required, upon the payment of such licenses, to issue a proper certificate of such payment. The moneys collected from such licenses shall be placed in the general fund of the county wherein collected.

This section shall not apply to the slaughter of meat by any person, firm, corporation, or association who may slaughter or cause to be slaughtered any neat cattle of his or its own breeding, nor to the sale of slaughtered cattle of his or its own breeding; provided any person who shall sell the equivalent of more than twenty-five (25) carcasses, beef and/or veal, in any one (1) year shall take out a license as herein provided for.

History: En. Sec. 2, Ch. 172, L. 1931.

3298.18. Inspection and marking of hides of slaughtered cattle—records—bill of sale to be presented, when—fee for inspection—license or inspection not necessary, when. All butchers and meat peddlers and all other persons shall have the hide in its entirety with tail attached of each beef or veal inspected in the county where the animal was slaughtered by a livestock inspector or deputy, or by a sheriff or his deputy, or by any person designated by the board of county commissioners other than a butcher, meat peddler, or employee or any butcher or meat peddler, who shall mark said hide or hides in such manner as the livestock commission may from time to time by fixed rule require. Each of the four quarters so presented shall be stamped with an ink stamp, which stamp shall be provided by the county and the form of which shall be specified by the livestock commission. Said inspector, sheriff, or authorized inspector shall keep a record and issue a certificate of inspection, on a form provided by the county, which form shall be specified by the livestock commission, giving the butcher's or peddler's or person's name, the place of business, the serial number of the inspection of the hide, the brand or brands on the hide, the date of inspection, and the place where such inspection was made. The officer making such inspection shall forward a copy of all inspection certificates to the secretary of the livestock commission at Helena, and to the county clerk of the county in which said inspection was made, on or before the first day of each month, and such inspection certificates shall be placed on file in the offices aforementioned.

When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which bill of sale shall be attached to the inspector's certificate sent to the county clerk and recorder. When such bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for such bill of sale. Said receipt shall describe the balance of the cattle covered by the original bill of sale. For each hide inspected the authorized officer making such inspection shall collect a fee of twenty-five cents (25c) for beef hides, and for veal hides a fee of ten cents (10c), such fee to be retained by the inspector, provided, however, that any butcher or hide dealer may contract or agree with the inspector for inspection at a less fee than twenty-five cents (25c) for each hide; and provided further that all such contracts inspector shall be appointed by the livestock commission.

Any person who kills beef or veal in good faith for his own use or for the use of himself and three (3) neighbors shall not be required to have such meat inspected or stamped, nor shall he be required to procure any license provided for in this act.

History: En. Sec. 3, Ch. 172, L. 1931.

3298.19. Inspection of hides before disposal—sale without inspection. Every person or persons, firm, corporation or association, slaughtering cattle for their own use, must before disposing of the hide or hides from such cattle, have the same inspected by an officer authorized to make such inspection and secure a certificate of inspection as hereinbefore provided for. It shall be unlawful for any person or persons, firm, corporation, or

association to sell or offer for sale any hide or hides from neat cattle which have not been inspected and identified by an authorized inspector.

Beef or veal hides may be sold to buyers without inspection; provided the purchaser immediately takes such hide or hides to the inspector residing in the county where such hide or hides were sold, and closest to the point where sale was made for inspection and identification. Such buyer must deliver to the inspector a bill of sale signed by the seller, fully describing such hide or hides as to sex, age, color, brands and whether green or dry. Such bills of sale shall be transmitted by the inspector to the county clerk and recorder with the report of the inspection.

History: En. Sec. 4, Ch. 172, L. 1931.

3298.20. Unlawful to purchase uninspected hides or carcass—exception.

It shall be unlawful for any person or persons, firm, corporation, or association to purchase the hide or carcass or any part thereof of any beef or veal without the inspection or identification herein provided for. The provision of this section shall not apply to any person or persons who shall purchase from a licensed butcher or peddler beef or veal in quantities less than one quarter of an animal.

History: En. Sec. 5, Ch. 172, L. 1931.

3298.21. Officers' authority concerning enforcement—seizure and sale of meat held in violation of act. Any officer having authority to make the inspection herein provided for may enter into and inspect butcher shop, slaughter houses, and other places of business of meat peddlers and butchers, or places where beef is handled in quantities, for the purpose of determining whether the provisions of this act have been complied with. In case meat is found which is being held in violation of the provisions of this act, the officers shall have authority to seize and take the same. All meat so seized shall be sold under the direction of a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds shall be paid to the county treasurer of the county in which said meat is seized for the benefit of the general fund of said county.

History: En. Sec. 6, Ch. 172, L. 1931.

3298.22. Transportation of uninspected meat unlawful. It shall be unlawful and a misdemeanor for any person to transport by a motor truck or other vehicle or have in his possession for the purpose of sale any meat which has not been inspected and stamped as required by the provisions of this act, and any officer authorized shall have the right to seize and sell the same as hereinbefore provided; provided, however, that this shall not apply to meat being transported or held for the purpose of inspection and stamping as provided for in this act.

History: En. Sec. 7, Ch. 172, L. 1931.

3298.23. Forfeiture of license for violations. In addition to the penalties provided by section 3298.24, any butcher, meat peddler, or any other person as defined by this act, who shall violate any of the terms of this act, shall suffer a forfeiture of the license required by this act, and no

license shall again be issued to such person until the expiration of one (1) year from the date of such conviction.

History: En. Sec. 8, Ch. 172, L. 1931.

3298.24. Penalties for violation of act or falsifying records. Any person or persons who violates any of the provisions of this act, or who wilfully falsifies any of the records required by this act, to be kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period of not less than thirty (30) days nor more than six (6) months, or by such fine and imprisonment for the first offense, and for each subsequent offense shall be deemed guilty of a felony and punished by imprisonment in the state prison for not less than one (1) year nor more than five (5) years.

History: En. Sec. 9, Ch. 172, L. 1931.

CHAPTER 285

RECORDING OF MARKS AND BRANDS—VENTING BRANDS— MORTGAGES OF LIVESTOCK

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| Section | 3299. Recorder of marks and brands. |
| | 3300. Venting brands. |
| | 3301. Recording of brands required. |
| | 3302. Application for recording—record of brands. |
| | 3303. Designation of years for re-recording brands. |
| | 3304. Right of owner of recorded brand. |
| | 3305. Publication of notice of re-recording brands. |
| | 3306. Penalty for violation of act. |
| | 3307. Fees of recorder of marks and brands. |
| | 3308. Repealing clause. |
| | 3308.1. Notices of chattel mortgages on livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—lists to be furnished stock inspectors. |
| | 3308.2. Contents of notices. |
| | 3308.3. Duty of mortgagees to file satisfactions of mortgages. |
| | 3308.4. Fees—disposal of. |
| | 3308.5. Brand recorder or livestock commission not responsible for collection or payment of money under mortgages. |

3299. Recorder of marks and brands. The secretary of the livestock commission is the general recorder of marks and brands.

History: En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907; re-en. Sec. 3299, R. C. M. 1921. **NOTE.**—For history of earlier recording acts see Cuerth et al. v. Arbogast, 48 M 209, 220, 136 P 383.

3300. Venting brands. Every person who sells horses, mules, or cattle must vent or counter-brand such animals, and said vent or counter-brand must be upon the same side of the animal as the original brand and must be a facsimile of the original brand, except that it may be reduced one-half in size, and the venting of said original brand shall be prima-facie evidence of sale or transfer of said animal or animals so vented.

History: En. Sec. 2943, Pol. C. 1895; re-en. Sec. 1793, Rev. C. 1907; re-en. Sec. 3300, R. C. M. 1921. take actual possession of them, nor file a copy of the bill of sale, with a notice of his claim in the office of the county clerk in which the animals were running at large (sec. 9297), nor rebrand them, he did not obtain constructive possession

Operation and Effect

Where the purchaser of a band of horses, then on the open range, did not

of them as against the claim of the vendor's creditors; as to them the transaction was fraudulent in law. *Anderson v. Hoffman*, 99 M 146, 148, 43 P 2d 644.

References

Cited or applied as section 1793, revised codes, in *Cuerth v. Arbogast*, 48 M 209, 217, 136 P 383.

3301. Recording of brands required. It shall be unlawful for any person, firm, or corporation to artificially brand or mark, or cause to be artificially branded or marked, any domestic animal or livestock, running at large, or upon the public domain, or open range, or which may run or stray at large or upon the public domain or open range, unless such artificial brand or mark has been recorded or re-recorded as provided by law, in the office of the general recorder of marks and brands, in the name of such person, firm, or corporation, within the period of ten years immediately preceding such branding or marking.

History: En. Sec. 1, Ch. 144, L. 1921; re-en. Sec. 3301, R. C. M. 1921.

3302. Application for recording—record of brands. Any person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock, shall make application therefor to the secretary of the livestock commission, who is in this act designated the general recorder of marks and brands. Such application must be in writing, and must contain the name, residence and postoffice address of the applicant, and the species of the animals on which the mark or brand is to be used. The said recorder shall thereupon designate for the applicant's use some practical form of mark or brand, distinguishable with reasonable certainty from all other marks and brands recorded, or re-recorded, within the period of ten years immediately preceding the time of filing the application, as in this act provided, in the name of some person, firm, or corporation other than the applicant, and he shall designate the position on the animals upon which the mark or brand shall be placed, and the species of animals on which the mark or brand may be used. The general recorder of marks and brands shall keep a record in a book kept by him for that purpose, of the particular mark or brand, the position on the animal where the same is to be used, the species of animals on which the same is to be used, and the date of recording. Such record shall be a public record and shall be prima-facie evidence of the facts therein recorded.

History: En. Sec. 2, Ch. 144, L. 1921; re-en. Sec. 3302, R. C. M. 1921.

3303. Designation of years for re-recording brands. The year A. D. 1921, and each tenth year thereafter are hereby designated years for the re-recording of all artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock; and it shall be the duty of the general recorder of marks and brands, upon the application of any person, firm, or corporation, or the transferee of such person, firm, or corporation, made in any year in this act designated a year for re-recording such marks and brands, to re-record any mark or brand which at the time of such application stands of record in said recorder's office in the name of such person, firm, or corporation; provided, that on and after January 1, 1922, no mark or brand which was neither originally recorded nor re-recorded in the name of such person, firm, or corporation, during

the re-recording year last preceding the date when such application is filed, nor originally recorded in the name of such person, firm, or corporation, or his or its predecessor or predecessors in interest therein between the time of such application and the re-recording year last preceding such application, shall be deemed of record in the office of such general recorder of marks and brands.

History: En. Sec. 3, Ch. 144, L. 1921; re-en. Sec. 3303, R. C. M. 1921.

3304. Right of owner of recorded brand. The person, firm, or corporation in whose name any mark or brand is of record, as in this act provided, is entitled to the right to the exclusive use of such mark or brand on the species of animal and in the position designated in such record, and a copy of such record certified by the general recorder of marks and brands shall be prima-facie evidence of such right; and such certificate shall likewise be prima-facie evidence that the person, firm, or corporation entitled to use such mark or brand is the owner of all animals on which the same appears in the position and on the species of animal stated in such certificate.

History: En. Sec. 4, Ch. 144, L. 1921; re-en. Sec. 3304, R. C. M. 1921.

Operation and Effect

Prima facie one is the owner of cattle bearing his recorded brand. *Klind v. Valley County Bank of Hinsdale*, 69 M. 386, 391, 222 P 439.

The best evidence of ownership of a livestock brand is the certificate of ownership executed by the recorder of marks and brands provided for by this section; therefore admission of the oral testimony of the secretary of the state livestock commission as to the owners of various brands found on horses shown by an inspector's reports with regards to shipments made

by one charged with having received stolen animals was technical error. *State v. Keays*, 97 M 404, 417, 34 P 2d 855.

Held, that a transfer of a herd of cattle, at the time in the possession of a lessee, after they were segregated from other cattle, identified and counted out in the presence of seller and buyer, the lessee at the time agreeing to the substitution of owners, was sufficient to transfer possession, even though the brand of the transferor was not vented, there being uncontroverted evidence to overcome the prima facie presumption flowing from the fact that they still bore the brand of the seller. *Costello v. Shields*, 99 M 335, 342, 43 P 2d. 879.

3305. Publication of notice of re-recording brands. Between the first day of January and the first day of July in each year in this act designated a re-recording year, the general recorder of marks and brands shall cause to be published in at least one issue of at least one newspaper of general circulation in each county of this state, wherein such a newspaper is published, a notice to the effect that such year is a year for re-recording such marks and brands, and that no mark or brand shall continue of record unless re-recorded, and shall likewise mail to each person, firm, and corporation in whose name any such mark or brand stands of record, a similar notice addressed to such person, firm or corporation at his or its postoffice address as shown by the records in such recorder's office.

History: En. Sec. 5, Ch. 144, L. 1921; re-en. Sec. 3305, R. C. M. 1921.

3306. Penalty for violation of act. Any person, firm, or corporation violating any provision of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or imprisonment in the county jail for not to exceed one year, or both such fine and imprisonment.

History: En. Sec. 6, Ch. 144, L. 1921; re-en. Sec. 3306, R. C. M. 1921.

3307. Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of four dollars (\$4.00), and for re-recording each mark or brand the sum of one dollar (\$1.00), and for a certified copy of any such record and each duplicate certificate one dollar (\$1.00), and all fees so collected shall be paid into the live stock commission fund.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929.

3308. Repealing clause. Chapter 27 of the laws of Montana of the twelfth session of 1911, and section 1791 of the revised codes of Montana of 1907, and all acts and parts of acts in conflict herewith are hereby repealed, save that no action or proceeding pending, and no penalty incurred under any law hereby repealed, at the time of such repeal, shall be abated hereby, but the same may be prosecuted and enforced in all respects as though such law or laws had not been repealed.

History: En. Sec. 8, Ch. 144, L. 1921; re-en. Sec. 3308, R. C. M. 1921.

3308.1. Notices of chattel mortgages on livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—lists to be furnished stock inspectors. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of chattel mortgages, renewals, assignments and satisfactions thereof, upon the livestock owned by any person, firm, corporation, or association, and bearing his, their or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of stock inspectors employed by the livestock commission and stationed at the several central livestock markets where records of marks and brands are kept. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the mortgagee of livestock, who shall give such notice.

History: En. Sec. 1, Ch. 91, L. 1935.

3308.2. Contents of notices. Such notices shall consist of a statement showing the date of chattel mortgage, the name of the mortgagors and mortgagees, and/or holder and owner thereof, a description of the livestock covered by said mortgage, the date and county when and where said chattel mortgage is filed, and any other date and place where said chattel mortgage is filed, and in case of notice of renewal, the notice shall state the date of renewal thereof and the date of filing such renewal, and the places where filed, and in the case of a notice of assignment of a chattel mortgage, such notice shall state the date of such assignment, the date of filing the same, the places where filed, and a description of the chattel mortgage assigned and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana.

History: En. Sec. 2, Ch. 91, L. 1935.

3308.3. Duty of mortgagees to file satisfactions of mortgages. It shall be the duty of the mortgagees, who filed notices of chattel mortgages, re-

newals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such mortgages with the general recorder of marks and brands immediately upon the satisfaction of said mortgage.

History: En. Sec. 3, Ch. 91, L. 1935.

3308.4. Fees—disposal of. The general recorder of marks and brands shall charge for filing and listing such notices of chattel mortgages the sum of fifty cents (50c) for each recorded brand listed in each chattel mortgage, and for filing and listing each notice of satisfaction or renewal or assignment of such chattel mortgage, the sum of fifty cents (50c) for each recorded brand listed therein. All fees so collected shall be paid into the livestock commission fund.

History: En. Sec. 4, Ch. 91, L. 1935.

3308.5. Brand recorder or livestock commission not responsible for collection or payment of money under mortgages. Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either mortgagor or mortgagee for the collection or payment of any money due the holder of any livestock mortgage on account of the filing and listing of notices of chattel mortgage or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith.

History: En. Sec. 5, Ch. 91, L. 1935.

CHAPTER 286

STOCK INSPECTORS AND DETECTIVES

- Section 3309. Appointment and powers.
- 3310. Bond and oath.
- 3311. Duties.
- 3312. Compensation.
- 3313. District officers, detectives, and inspectors.
- 3314. Brands fraudulently changed.
- 3315. Compensation for animals killed.
- 3316. Action by dissatisfied owner—costs.

3309. Appointment and powers. The livestock commission may appoint such stock inspectors and detectives as are necessary for the protection of the livestock interests of the state. Such inspectors and detectives shall take and subscribe the official oath required by law and shall have like powers and authority as are conferred by law upon deputy sheriffs; save they shall not be entitled to the fees or emoluments awarded by law to deputy sheriffs.

History: En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921; re-en. Sec. 3309, R. C. M. 1921.

3310. Bond and oath. The stock inspectors and detectives must each make and execute a bond with two sufficient sureties, in the sum of one thousand dollars, to the state, conditioned for the full and faithful performance of their duties, said bond to be approved by and filed with the secretary of state, and each must take and subscribe the constitutional oath of office.

History: En. Sec. 2971, Pol. C. 1895; re-en. Sec. 1797, Rev. C. 1907; re-en. Sec. 3310, R. C. M. 1921.

3311. Duties. It is the duty of the stock inspectors and detectives to arrest all persons who in their presence violate the stock laws of the state, and every stock inspector and detective, upon information that any person has committed any offense against the laws of the state, in feloniously branding or stealing any stock, or any offense against the laws of the state, for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of such person, and, upon warrant issued therefor, immediately arrest such person and bring him before the proper officer and notify the board of his acts.

History: En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907; re-en. Sec. 3311, R. C. M. 1921.

3312. Compensation. The stock inspectors and detectives are under the exclusive control and direction of the board, and must be paid for their services such sums as may be agreed upon by the board out of the fund hereinafter provided for, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921.

3313. District officers, detectives, and inspectors. The stock inspectors and detectives are district officers, and the board must designate the district in which the inspectors and detectives shall serve, and the district must be designated in their commissions.

History: En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907; re-en. Sec. 3313, R. C. M. 1921.

3314. Brands fraudulently changed. Whenever a mark or brand upon any neat cattle, horse, or other animals has been fraudulently altered, obliterated, or defaced, so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill said animal to ascertain the mark or brand so altered or defaced, upon paying to the owner the value of said animal.

History: En. Sec. 2974, Pol. C. 1895; re-en. Sec. 1801, Rev. C. 1907; re-en. Sec. 3314, R. C. M. 1921.

3315. Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921.

3316. Action by dissatisfied owner—costs. Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against said officer seizing said animal, and should he fail to recover damages in any greater amount than that allowed under section 3315, he shall bear all costs that may be incurred in the maintenance of said action.

History: En. Sec. 2976, Pol. C. 1895; re-en. Sec. 1803, Rev. C. 1907; re-en. Sec. 3316, R. C. M. 1921.

CHAPTER 287

INSPECTION OF HORSES AND CATTLE BEFORE REMOVAL FROM THE STATE

Section 3317.	Inspection of horses before removal from state.
3318.	Duty of stock inspector.
3319.	Penalties.
3320.	Fees.
3321.	Inspection of cattle to be removed from state.
3322.	Duties of stock inspector.
3323.	Penalties for violation of act.
3323.1.	Copy of inspection to be furnished livestock commission.
3323.2.	Penalty for violation.

3317. Inspection of horses before removal from state. From and after the passage of this act, it shall be the duty of any and all persons removing or taking from this state, in any manner whatsoever, any horse, mule, mare, colt, foal, or filly, immediately before the shipment or removal of the same, and at the place from which the shipment is to be made, to cause the same to be inspected by a stock inspector or the sheriff of the county from which such stock is to be removed, as hereinafter provided.

History: En. Sec. 1, p. 93, L. 1901; re-en. Sec. 1804, Rev. C. 1907; re-en. Sec. 3317, R. C. M. 1921.

3318. Duty of stock inspector. On receiving notice from any person that he desires to remove or take from this state, to be sold or used outside of this state, any of the class of animals mentioned in the preceding section, it shall be the duty of any stock inspector, or the sheriff of the county from which such animals are to be taken, to inspect the same, by carefully noting the brands upon such animals, and otherwise describing such of said animals as may have no brands, and to keep a record of all such inspections in a book to be provided for that purpose by the county commissioners of each county. Such descriptions shall contain:

1. The brands of all animals branded, and a description of animals not branded.

2. The number of animals inspected for removal.

3. The name of the owner or person removing the same.

4. The date of such inspection, with destination to which such animals are to be taken. If, in the opinion of the officer making the inspection, the person proposing to remove such stock is rightfully in the possession of the same, he shall grant such person a certificate of inspection in duplicate, containing the matters herein provided, with the further statement that permission is granted to such person to remove such animals from this state. The person so receiving said certificates must deposit with the agent of the railroad company at the point from which the shipment is made the duplicate certificate referred to, which said duplicate must be filed by the agent, and must be all times during business hours accessible to the public. The agent must, at the time of the receipt of the duplicate, indorse upon the original certificate the date of the receipt of the duplicate. If, however, the officers making such inspection shall be of the opinion that such stock, or any portion thereof, is stolen, or otherwise wrongfully in the possession of the person proposing to remove the same, he shall withhold such certificate and permit to remove, until satisfactory assurance is given him of the rightful possession of such property by the person proposing to

remove the same. Such certificate of inspection shall be by the holder thereof exhibited to any person demanding to see the same.

History: En. Sec. 2, p. 94, L. 1901; re-en. Sec. 1805, Rev. C. 1907; re-en. Sec. 3318, R. C. M. 1921.

3319. Penalties. Any railroad company or agent shipping or permitting to be shipped from any station, siding, or stock-yards, without first receiving the duplicate certificate herein provided for, and indorsing on the original the date of its receipt, any of the animals mentioned in this charter, and any person removing or attempting to remove any of said animals without first securing a certificate of inspection, or any person in any other way violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction in any court of competent jurisdiction, shall be fined in any sum not less than fifty dollars nor more than three hundred dollars and costs, and in default of payment of such fine and costs, shall be imprisoned in the county jail until such fine and costs are discharged, at the rate now provided by law. The fine herein provided for, if collected, shall be paid into the county treasury to the credit of the general fund of the county where said conviction is had.

History: En. Sec. 3, p. 95, L. 1901; re-en. Sec. 1806, Rev. C. 1907; re-en. Sec. 3319, R. C. M. 1921.

3320. Fees. For the service of inspection herein provided for, the officer making such inspection shall receive three dollars per day while engaged in making such inspection, and shall receive in addition thereto his necessary actual expenses, to be paid by the person for whom the inspection is made.

History: En. Sec. 4, p. 95, L. 1901; re-en. Sec. 1807, Rev. C. 1907; re-en. Sec. 3320, R. C. M. 1921.

3321. Inspection of cattle to be removed from state. It shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, or calf, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the state as hereinafter provided, provided, however, that whenever any of the class of stock aforementioned shall be loaded for shipment and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this state before shipment.

History: En. Sec. 1, Ch. 8, L. 1907; Sec. 1812, Rev. C. 1907; re-en. Sec. 3321, R. C. M. 1921.

3322. Duties of stock inspector. On receiving notice from any person that he desires to remove from this state to be sold or used outside of the state any of the class of animals mentioned in the preceding section, it shall be the duty of any stock inspector to whom such is given, to inspect said animals, carefully noting all of the brands and marks upon same, and make a report of such inspection to the secretary of the board of stock commissioners, which said report shall show the date of such inspection, the name and address of the person taking said animals from the state, the destination of the shipment, the marks and brands upon each animal together with the number of animals listed under each brand; and if in the opinion of the stock inspector the person proposing to remove the same, is

rightfully in possession of the animals inspected, he shall grant such persons a certificate of inspection, containing the matter herein provided, with the further statement that permission is granted said person to remove such animals from the state. The person receiving said certificate must deposit it with the railroad agent at the point from which said shipment was made, which certificate must be filed by the agent and must be at all times during business hours accessible to the public, and the agent must at the time of filing said certificate indorse upon it the date of its receipt and filing by him. If, however, any stock inspector making such inspection shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove same from this state, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock.

History: En. Sec. 2, Ch. 8, L. 1907; Sec. 1813, Rev. C. 1907; re-en. Sec. 3322, R. C. M. 1921.

3323. Penalties for violation of act. Any railroad company or agent, shipping or permitting to be shipped from any station, siding, or stock-yards, within this state, any of the class of animals described in this chapter without first receiving the aforesaid inspection certificate and endorsing upon it the date of its receipt and filing, and any person removing or attempting to remove from this state any of the said animals without first securing the certificate of inspection herein provided, and any person who shall load any of such stock for shipping and consign same to any point where the state board of stock commissioners maintains a stock inspector, and who shall then reconsign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction in any court of competent jurisdiction, shall be fined in any sum not less than fifty dollars nor more than three hundred dollars, or imprisoned in the county jail not to exceed six months, such fine, if collected, to be turned into the general fund of the county where such conviction is had.

History: En. Sec. 3, Ch. 8, L. 1907; Sec. 1814, Rev. C. 1907; re-en. Sec. 3323, R. C. M. 1921.

3323.1. Copy of inspection to be furnished livestock commission. It shall be the duty, and it is hereby mandatory that every stock inspector or sheriff making an inspection, under authority given by this chapter, shall, within five days after making an inspection, furnish copy of such inspection to livestock commission.

History: En. Sec. 1, Ch. 69, L. 1933.

3323.2. Penalty for violation. Any violation of this act shall constitute a misdemeanor and shall be punished by a fine of fifty dollars.

History: En. Sec. 2, Ch. 69, L. 1933.

CHAPTER 288

INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM ONE COUNTY TO ANOTHER

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| Section 3324. | Inspection of livestock on removal from county to county. |
| 3325. | Duties of stock inspector. |
| 3326. | Certificate of inspection. |

3327. Penalty for violation of act.

3327.1. Seizure of livestock believed stolen.

3327.2. Retention of stock—sale—disposal of proceeds.

3324. Inspection of livestock on removal from county to county. From and after the passage of this act, it shall be the duty of any and all persons, associations or corporations removing or taking livestock or neat cattle from one county to another within this state by railroad, or in any other manner whatsoever, to cause the same to be inspected for brands by a state stock inspector, and no railroad company shall accept such livestock for shipment, unless the shipper shall produce a certificate of their inspection for brands as herein required: (provided, however, that the livestock commission may authorize said shipments to be made without said inspection, in the event there is an inspection made at destination; and, provided, further, that the provisions of this act shall not apply to the said stock when driven by the owner from one county to another for the purpose of pasturing, feeding, or changing the range thereof, nor to any stock so removed or taken by any person, association, or corporation, when such stock is used in the ordinary conduct of his business, and such person, association, or corporation has been the owner of said stock to be removed for at least three months.)

History: En. Sec. 1, Ch. 125, L. 1907; Sec. 1808, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1915; amd. Sec. 1, Ch. 72, L. 1917; amd. Sec. 1, Ch. 52, L. 1921; re-en. Sec.

3324, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1923.

References

State v. Keays, 97 M 404, 419, 34 P 2d 855.

3325. Duties of stock inspector. On receiving notice from any person, association, or corporation that he or it desires to remove, ship, or take from one county to another within this state any of the classes of animals named in the preceding section, it shall be the duty of the stock inspector immediately to inspect the same, by carefully noting the brands upon such animals and otherwise describing such animals, and to keep a full and complete record of all such inspections in a book to be provided for that purpose by the state board of stock commissioners, which description shall contain:

1. The brands of all animals branded, and the description of animals not branded.
2. The number of animals inspected for removal.
3. The name of the owner or person removing the same.
4. The name of the person, corporation, or association from which the person removing the same made purchase of such animals.
5. The date of such inspection, with the destination to which such animals are to be taken, and the means of their transportation.
6. A statement that none of such animals are afflicted with any infectious or contagious disease.

If, in the opinion of the inspector making the inspection, the person proposing to remove such stock is rightfully in the possession of the same, and such animals are not infected with disease, he shall grant such person or persons, corporation, or association certificate of inspection containing a statement of the matters herein above required, with a further statement that permission is granted to such person to remove such animals

from the county. If, however, the officer or officers making such inspection shall be of the opinion that such stock, or any portion thereof, is stolen or otherwise wrongfully in the possession of the person or persons proposing to remove the same, or if such stock, or any portion thereof, is infected with disease, the inspection certificate and permit to remove shall be withheld until satisfactory evidence is given to the inspector of the rightful possession of such property by the person or persons proposing to remove the same, and in case of disease, until the state veterinary surgeon shall have made examination of the animals withheld on account of disease and made written order and direction respecting their disposal. Such certificate of inspection and permit to remove shall be by the holder thereof exhibited to any person or persons demanding to see the same.

History: En. Sec. 2, Ch. 125, L. 1907; Sec. 1809, Rev. C. 1907; amd. Sec. 2, Ch. 131, L. 1915; re-en. Sec. 3325, R. C. M. 1921.

3326. Certificate of inspection. It shall be the duty of the stock inspector, immediately upon making the inspection herein required, in case he passes such livestock, to issue the certificate herein provided for, and to immediately transmit a duplicate of such certificate to the state board of stock commissioners, to be by said board held and kept as a permanent record, and in case he refuses to grant such inspection certificate because of question as to the ownership of the property, he shall immediately notify the state board of stock commissioners of his refusal to grant such certificate, and his reasons therefor; and, should he refuse to grant a certificate because of his belief that such livestock are infected with disease, the state veterinary surgeon shall be at once notified and requested to make inspection and examination.

History: En. Sec. 3, Ch. 125, L. 1907; Sec. 1810, Rev. C. 1907; amd. Sec. 3, Ch. 131, L. 1915; re-en. Sec. 3326, R. C. M. 1921.

3327. Penalty for violation of act. Any person removing or attempting to remove any livestock of the kind named in section 3324 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad accepting for shipment any such property, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act shall be turned into the state treasury, and placed to the credit of the stock detective and inspection fund.

History: En. Sec. 4, Ch. 125, L. 1907; Sec. 1811, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1915; re-en. Sec. 3327, R. C. M. 1921.

3327.1. Seizure of livestock believed stolen. From and after the passage and approval of this act, all state stock inspectors inspecting any livestock either before or after shipment or removal from one county to another within the state of Montana, shall, in addition to the powers heretofore granted them by law, possess the further authority to inspect and

seize, either at the point of shipment or at destination, any livestock or the proceeds thereof, which said inspector may have reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof, or to the description contained in any certificate of inspection issued before shipment or removal of said livestock.

History: En. Sec. 1, Ch. 37, L. 1927.

3327.2. Retention of stock—sale—disposal of proceeds. Upon taking possession of any such livestock in the exercise of the authority granted by this act, the inspector may retain same in his possession for not to exceed fifteen days at the expense of the owner, for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen days, sell said livestock in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the state livestock commission, together with a full description of the animal or animals sold, giving marks or brands, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be turned over by the livestock commission to the state treasurer, and by the latter be deposited in the estray stock fund where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims against said fund.

History: En. Sec. 2, Ch. 37, L. 1927.

CHAPTER 289

INSPECTION OF LIVESTOCK MARKETS

- Section 3328. Public markets—record books of sales of livestock.
3329. Inspection of public markets.
3330. Quarantine of diseased animals—ownership of animals to be determined —proceeds from sale of stock of unknown owners.
3331. State treasurer to hold proceeds of sales of stray stock.
3332. Penalties.

3328. Public markets—record books of sales of livestock. Hereafter any person, firm, corporation, or association of individuals, desiring to establish, maintain, or conduct a market for the sale of horses or other livestock at public auction, or otherwise, shall keep a full and complete record book in which must be recorded the name or names of any person, corporation, or association of individuals bringing to the said market, or offering for sale at such market, any horses or other live stock, together with a description thereof as to their kind, and of all brands of every kind thereon. And if requested by the sheriff of the county or a stock inspector, in case question arises respecting the ownership, particular description shall be recorded showing, in addition to all the brands; the color and sex of such animals; and, in addition, such record shall clearly show the name of the person for whom such animal or animals were sold, the date of the sale, and the person to whom such animal or animals were sold, and the particular character of the animal or animals. Such record book must be open for inspection by the public for persons interested at any and all reasonable times.

History: En. Sec. 1, Ch. 96, L. 1907; Sec. 1815, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1909; re-en. Sec. 3328, R. C. M. 1921.

3329. Inspection of public markets. The stock inspector of the county or district, or the sheriff of any county in this state, and the state veterinarian, or any person duly appointed and representing the livestock commission, may enter upon the premises where any such livestock are being held or sold, and be accorded every facility by the owners thereof in determining whether any violations of the law are being made, or are likely to be made, by any person, association, or corporation whatsoever; provided, however, that such inspection shall not unnecessarily interfere with the conduct of the sales; and that no horses or other livestock so sold at such market shall be delivered to the purchaser until he shall first have received an inspection certificate, issued by one of the officers hereinabove designated, for the inspection of such livestock, showing clearly and explicitly that the person making such inspection, as herein authorized, is satisfied as to the ownership of such livestock and the health of all animals so sold.

History: En. Sec. 2, Ch. 96, L. 1907; Sec. 1816, Rev. C. 1907; re-en. Sec. 3329, R. C. M. 1921.

NOTE.—In this and other sections the words “state board of livestock commissioners” have been changed by the code commissioner of 1921 to “livestock commission” to conform to later enactments.

3330. Quarantine of diseased animals—ownership of animals to be determined—proceeds from sale of stock of unknown owner. Should the person herein authorized to inspect such livestock at any such sale find any of the animals afflicted with an infectious or contagious disease, he shall immediately take possession of such animals and place them in quarantine, to be thereafter disposed of as may be directed by the state veterinary surgeon. And, in the event there is any question arising respecting the ownership of any animal sold, the person so making the inspection, as herein authorized, shall have the right, privilege, power, and authority to take possession of such animal or animals; provided, that he shall notify the person in charge of such market and conducting the sales, and also the person who may purchase any such livestock at any such sale, within a reasonable time; provided, further, that where any livestock is sold, the ownership of which is not known or determinable by the person or persons herein authorized to make inspection, they may be sold as strays, and that the net proceeds derived from said sale shall be transmitted to the livestock commission of the state of Montana, at Helena, Montana, to be held and kept, together with a complete description of any such animal or animals, and the brands thereon, and such money shall be held and retained by said commission for the use and benefit of the owner or owners of any such animal or animals, and paid over to such owner or owners when the ownership shall have been satisfactorily determined. And, in the event that the proceeds of the sale of any such animal or animals so transmitted to the livestock commission be not claimed by the lawful owner of the property so sold, within two years from the date of the receipt of the proceeds of such sale, such money shall be held and disposed of as hereinafter provided.

History: En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, R. C. M. 1921.

3331. State treasurer to hold proceeds of sales of stray stock. When the provisions of this law shall have been fully complied with, and the

money paid into the state treasury, two years after its receipt from the state board of stock commissioners, the state treasurer shall be required to hold such money in a separate fund, to be known and designated as the "stray stock fund," and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the livestock commission fund.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921.

3332. Penalties. Any person or persons, corporation, or association guilty of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and is punishable by a fine not exceeding six hundred dollars, or by six months' imprisonment in the county jail, or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 96, L. 1907; Sec. 1819, Rev. C. 1907; re-en. Sec. 3332, R. C. M. 1921.

CHAPTER 290

ESTRAYS

Section 3333.	Estrays—livestock commission authorized to take possession of.
3334.	Authority of stock inspector to gather up estrays—notice of sale.
3335.	Sale at public auction—branding.
3336.	Expenses, how paid—disposition of proceeds of sale.
3337.	"Estray," as herein used, defined.
3338.	Publication of description of estrays sold—disposition of proceeds remaining in state treasury.
3339.	"Estray," defined.
3340.	Penalty for wrongful taking of estray.
3341.	Shipment of stray cattle—duty of shipper and railroad agents.
3341.1.	Violations, penalty for.
3342.	Description of animals taken out during shipment.
3343.	Powers and duties of inspectors outside of state.
3344.	Livestock commission to furnish blanks.
3345.	Failure of shipper or inspector to comply with this act.

3333. Estrays—livestock commission authorized to take possession of. The livestock commission, by and through its legally appointed stock inspectors, be and it is hereby authorized to take possession of any and all estrays found running at large within the state of Montana, and to dispose of the same, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915; re-en. Sec. 3333, R. C. M. 1921.

References

Jorgenson v. Story et al., 78 M 477, 493, 254 P 427.

3334. Authority of stock inspector to gather up estrays—notice of sale. Any stock inspector appointed by the livestock commission shall take into his possession all estrays found within his district, and shall hold such estrays so collected by him in his possession, and care for the same in the cheapest and most practicable manner for a period of not less than thirty days, nor more than sixty days, during which time he shall advertise the facts that he holds such estray or estrays, and that unless claimed by the owner thereof he will, on a date to be specified in said notice, sell such

estrays at public auction to the highest bidder for cash, which said notice shall be published in the newspaper doing the county printing of the county wherein such estray or estrays are found, and in addition thereto in a paper published in the town or city nearest the place at which such estray is held, which said notice shall be published at least once a week for four consecutive weeks, and shall contain a statement of the date of the sale, the place where such sale is to be held, and a general description of such estray, including the sex of the same and the approximate age, together with an illustration of the brand and the position of such brand upon such estray, together with a description of the place or locality where such estray was found or taken up; and the owner of such estray may appear and claim the same at any time prior to the sale or shipment, as hereinafter provided, and without cost or expense to said owner.

History: En. Sec. 2, Ch. 34, L. 1915; re-en. Sec. 3334, R. C. M. 1921.

3335. Sale at public auction—branding. On the date specified in the notice provided in the preceding section, such stock inspector shall cause said estray or estrays to be sold at public auction to the highest bidder for cash; and before removal from said sale the said stock inspector shall cause the said estray or estrays to be branded with the recorded estray brand of the livestock commission.

History: En. Sec. 3, Ch. 34, L. 1915; re-en. Sec. 3335, R. C. M. 1921.

3336. Expenses, how paid—disposition of proceeds of sale. All expenses attending the collecting, holding, advertising, and selling of such estray or estrays shall be paid out of the gross proceeds of the sale of such estray or estrays, and the balance of the proceeds of such sale shall be forwarded to the secretary of the livestock commission to be by him advertised as estray funds in the manner now provided by law, and such proceeds shall be subject to claim by the owner of the animal for a period of two years from the date of such sale; provided, that in the event the owner of such estray claims said animal prior to the sale thereof, the expense therefore incurred by the stock inspector shall be paid by the livestock commission as an expense of said commission.

History: En. Sec. 4, Ch. 34, L. 1915; re-en. Sec. 3336, R. C. M. 1921.

3337. “Estray,” as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt over one year old, cow, ox, bull, stag, steer, heifer, or calf over one year old, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the postoffice designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of

the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921.

3338. Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two consecutive weekly or semi-monthly issues next after May first of each year in not more than four weekly or semi-monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the state livestock commission fund.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927.

3339. "Estray" defined. The term "estrays" shall mean any mare, gelding, stallion, colt, foal or filly, mule, jack, jennet, cow, ox, steer, bull, stag, heifer, or calf, which is running at large away from its accustomed range, or any animal as above described, the owner of which cannot with reasonable diligence be found.

History: En. Sec. 1, Ch. 169, L. 1921; re-en. Sec. 3339, R. C. M. 1921.

References

Jorgenson v. Story et al., 78 M 477, 490, 254 P 427.

3340. Penalty for wrongful taking of estray. Any person who shall, for his own use or benefit and without the owner's consent, take into his possession any estray, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 169, L. 1921; re-en. Sec. 3340, R. C. M. 1921.

3341. Shipment of stray cattle—duty of shipper and railroad agents. Every person, agent, firm, corporation, pool or roundup association, who shall ship cattle from this state to any market where Montana livestock inspectors are maintained, may ship with their own cattle any estrays which may be among them, but they shall, before shipment, or at the time of loading same on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on such cattle, whether their own or estrays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing each brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment. It shall be the duty of the railroad agent at the point of loading to require from the shipper tallies as described in this act, and to forward, within twenty-four (24) hours after loading, one copy to the livestock commission at Helena, Montana, and another copy to the Montana brand inspector at the point of destination.

History: En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1923.

3341.1. Violations, penalty for. Every person, agent, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding three hundred dollars (\$300.00), or imprisonment in the county jail not to exceed six (6) months, or both such fine and imprisonment.

History: En. Sec. 2, Ch. 29, L. 1923.

3342. Description of animals taken out during shipment. Every person in charge of or who accompanies such shipment as the shipper in charge shall take an accurate description, including the brands of each and every animal, whether dead or alive, taken out of shipment in transit between original loading point and final destination, and shall hand such description to the state stock inspector at such point of destination immediately upon arrival of the shipment in the stock-yards.

History: En. Sec. 2, Ch. 94, L. 1907; Sec. 1821, Rev. C. 1907; re-en. Sec. 3342, R. C. M. 1921.

3343. Powers and duties of inspectors outside of state. The stock inspector appointed to inspect Montana cattle at any cattle market outside of this state shall be duly commissioned by the livestock commission, and shall be qualified and have power and authority to inspect any or all cattle that may come from this state to the market where he may be located, having the same power as other stock inspectors within the state to inspect and seize any stock which he may have reason to believe is stolen, or upon which brands have been altered or obliterated, and shall have authority to take the proceeds of any animal in dispute, or bearing altered or burned brands, remitting such proceeds to the livestock commission, who shall hold same pending a decision as to ownership, and such stock inspector shall, upon receipt of the certified lists mentioned in the two preceding sections, make inspection of the cattle so listed, and if, upon comparison of such list with his own inspection, he shall find any difference or discrepancy, he shall make a second inspection of any animal or animals or upon which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct, and he shall forthwith make inspection report to the livestock commission, stating in detail wherein any discrepancies with the loading tally exist, and calling special attention to his own inspection of such animal or animals, and he shall, on his own report, make mention of any and every animal, with the brands thereon, which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination; all such reports to be entered in a suitably bound book and be at all times open to public inspection.

History: En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907; re-en. Sec. 3343, R. C. M. 1921.

Operation and Effect

Under this section, the state livestock commission may seize any Montana livestock at any market outside the state where its inspector has reason to believe that the animals were stolen or where

brands upon them appear to have been altered or obliterated, leaving their ownership in doubt, and hold the proceeds pending decision as to their ownership. *Schoenborn v. Williams et al.*, 83 M 477, 481, 272 P 992.

References

Jorgenson v. Story et al., 78 M 477, 254 P 427.

3344. Livestock commission to furnish blanks. The livestock commission shall have printed the necessary blanks for the tallying of cattle at loading point as provided in section 3341 of this code, and shall furnish same free to shippers on application. The expense of such printing shall be paid out of the livestock commission fund.

History: En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907; re-en. Sec. 3344, R. C. M. 1921.

3345. Failure of shipper or inspector to comply with this act—penalty. Any person, agent, firm, corporation, pool, or round-up association who shall ship cattle from this state, and shall fail to make such inspection or tally at point of loading, or who shall fail to file a true and correct tally, to the best of their knowledge and belief, of all the brands of cattle in such shipment with the railroad agent at the point of shipment, or who shall fail to forward a true and correct copy, duly signed by them as parties making the shipment, to the stock inspector at point of destination, or any person who shall accompany a shipment of cattle as the shipper in charge from this state, and shall fail to take a description of any and every animal taken out in transit and hand such description to the stock inspector at point of destination, or any stock inspector at market points who shall fail to make inspection as provided in section 3343 of this code, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than fifty dollars nor more than five hundred dollars for each and every offense. The fines so collected shall be turned into the general fund of the county where conviction is had, and any stock inspector, sheriff, or other police officer shall have power to make arrests to enforce the provisions of this act.

History: En. Sec. 5, Ch. 94, L. 1907; Sec. 1824, Rev. C. 1907; re-en. Sec. 3345, R. C. M. 1921.

3346-3350. Repealed—Chapter 75, laws of 1923.

CHAPTER 291

HIDES OF SLAUGHTERED CATTLE—REGULATIONS—HIDE DEALERS' LICENSE

- Section 3350.1. Hide buyer to procure bill of sale—contents of bill of sale—inspection of hides may be demanded—penalty for violations—quantity purchaser of hides need not comply, when.
- 3350.2. Falsifying bill of sale of hides deemed misdemeanor.
- 3350.3. Penalty for violations.
- 3350.4. Mutilation or concealment of hides deemed felony.
- 3350.5. Sufficiency of pleading and proof in criminal prosecution under act.
- 3350.6. Penalty for felonious violation.
- 3350.7. Hide dealer defined.
- 3350.8. Hide dealers' license—fee—disposal of proceeds.
- 3350.9. Inspection and marking of hides sold.
- 3350.10. Inspection tag to be on purchased hides—exception.
- 3350.11. Unlawful for carriers to transfer uninspected and untagged hides.
- 3350.12. Penalty for violation of act or falsification of records.
- 3350.13. Forfeiture of license for violations.
- 3350.14. Invalidity of part of act not to affect remainder.

3350.1. Hide buyer to procure bill of sale—contents of bill of sale—inspection of hides may be demanded—penalty for violations—quantity purchaser of hides need not comply, when. Any person, firm or corporation who shall purchase or receive any hides of cattle, shall obtain from the

owner thereof, or from his legally authorized agent, at the time of purchasing or receiving the same, a bill of sale in writing, which bill of sale shall recite in full the date of receiving the hide or hides, the name of the person, firm or corporation selling such hides, a description of each hide which shall include the marks and brands on each hide, the weight thereof, and whether the same is dry or green, and shall keep a permanent record of all such purchases. Such records and bills of sale shall be exhibited for examination at any time upon demand of any stock inspector or peace officer of this state. All such hides so purchased shall be submitted for examination and inspection at any time within ten days after purchase, at the purchaser's residence or place of business, upon demand of any stock inspector or peace officer of this state. Any person, firm or corporation who shall fail to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as hereinafter provided. It being expressly provided, that purchases of hides may be made in quantities exceeding ten (10) in number, in one purchase, from a seller who is regularly engaged in the slaughter of cattle, at a fixed place of business, who has already complied with the law regulating the slaughter of cattle, without a compliance with the foregoing provision of this section, if the seller shall deliver to the purchaser a copy of the record of the slaughter of the animals from which said hides were taken and none other.

History: En. Sec. 1, Ch. 61, L. 1923.

3350.2. Falsifying bill of sale of hides deemed misdemeanor. Any person, firm or corporation selling or disposing of hides in any manner, or any person, firm or corporation purchasing such hides, who shall wilfully or intentionally falsify the bill of sale covering such hides, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter provided.

History: En. Sec. 2, Ch. 61, L. 1923.

3350.3. Penalty for violations. Any person, firm or corporation who violates any of the provisions of this act, shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail, for a period of not less than ten days nor more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 61, L. 1923.

3350.4. Mutilation or concealment of hides deemed felony. Every person who wilfully or maliciously mutilates, destroys, or conceals the hide from any horse, mare, colt, mule, jack, jennet, bull, steer, cow, calf, goat, hog or sheep with intent to or for the purpose of removing evidence of ownership of such hide or the animal from which said hide was removed, is guilty of a felony, and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 76, L. 1923.

3350.5. Sufficiency of pleading and proof in criminal prosecution under act. In any prosecution for the violation of the provisions of this act, it shall not be necessary for the state to allege in the complaint or information or proof, the ownership of the hide, or of the animal from which said

hide was removed, but it shall be sufficient to allege in the complaint or information or proof that the owner of said hide or of the animal from which said hide was removed, is unknown and not the property of the defendant.

History: En. Sec. 2, Ch. 76, L. 1923.

3350.6. Penalty for felonious violation. Any person or persons who violates any of the provisions of this act shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than one year nor more than ten years.

History: En. Sec. 3, Ch. 76, L. 1923.

3350.7. Hide dealer defined. Every person, firm, corporation or association engaged in the business of buying or selling any hide or hides from any horse, mare, colt, mule, jack, jenny, shall for the purpose of this act be designated a hide dealer or buyer.

History: En. Sec. 1, Ch. 151, L. 1929.

3350.8. Hide dealers' license—fee—disposal of proceeds. Every hide dealer or buyer before engaging in or conducting any business as such, in any county, shall pay to the county treasurer of such county a license of (\$5.00) which license shall continue in force and effect for that calendar year. The county treasurers of the state are hereby authorized and required, upon the payment of any such license, to issue a proper certificate of such payment. The moneys collected from such license shall be placed in the general fund of the county wherein collected.

History: En. Sec. 2, Ch. 151, L. 1929.

3350.9. Inspection and marking of hides sold. Any person selling a hide or hides from any horse, mare, colt, mule, jack or jenny shall have the hide or hides in their entirety inspected in the county from which they originate by a livestock inspector, or a sheriff, or any person designated by the board of county commissioners, other than a hide dealer or buyer or employee of any hide dealer or buyer, who shall issue an inspection certificate as hereinafter provided for. To the hide shall be attached a metal tag bearing the name of the county, the inspector's number and serial number to apply to the hide. The form of such metal tag shall be specified by the livestock commission. Said inspector, sheriff or authorized inspector shall keep a record and issue a certificate of inspection on a form provided by the county which form shall be specified by the livestock commission, giving the kind of hide, seller or owner's name, address, brand or brands on each hide, the serial number on the tag, date of inspection and place where such inspection was made. The officer making such inspection shall forward a copy of all inspection certificates made to the secretary of state livestock commission, and to the county clerk of the county in which said inspection was made on or before the first day of each month and such inspection certificates shall be placed on file in the offices aforementioned.

When ownership of the hide or hides is claimed by bill of sale the officer making the inspection shall demand and receive the original bill of sale which bill of sale shall be attached to the inspector's certificate sent to the secretary of the state livestock commission. For each hide inspected the

authorized officer making such inspection shall collect a fee of (25c), such fee to be retained by the inspector, provided, however, that any hide dealer may contract or agree with the inspector for inspection at a less fee than twenty-five cents for each hide, and provided further that all such contract inspectors shall be appointed by the secretary of the state livestock commission.

History: En. Sec. 3, Ch. 151, L. 1929.

3350.10. Inspection tag to be on purchased hides—exception. It shall be unlawful for any person, firm, corporation, or association to purchase the hide or hides of any horse, mare, colt, mule, jack or jenny without first making an examination for the inspection tag. Exception—Except hides may be sold to buyers without inspection or tag providing the purchaser immediately takes such hide or hides to the inspector residing in the county where such hide or hides were sold, and closest to the point where sale was made for inspection and tagging.

History: En. Sec. 4, Ch. 151, L. 1929.

3350.11. Unlawful for carriers to transport uninspected and untagged hides. It shall be unlawful and a misdemeanor punishable by a fine of not exceeding one hundred dollars (\$100.00) for any railroad company, express company, or other common carrier to accept for shipment or transportation any hide or hides from any horse, mare, colt, mule, jack or jenny, unless such hide or hides has affixed thereto the metal tag provided for in this act, and each shipment must be accompanied by an itemized list prepared by the shipper, to accompany the bill of lading showing the number and kind of hides and giving the brand or brands on each hide and the serial number and county as given on the metal tag.

History: En. Sec. 5, Ch. 151, L. 1929.

3350.12. Penalty for violation of act or falsification of records. Any person or persons who violate any of the provisions of this act, or who wilfully falsifies any of the records required by this act to be kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than (\$50.00), nor more than (\$250.00) or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

History: En. Sec. 6, Ch. 151, L. 1929.

3350.13. Forfeiture of license for violations. In addition to the penalties provided by section 3350.6, any hide dealer or buyer who shall violate any of the terms of this act shall suffer a forfeiture of the license required by this act, and no license shall again be issued to such person until the expiration of one year from date of such conviction.

History: En. Sec. 7, Ch. 151, L. 1929.

3350.14. Invalidity of part of act not to affect remainder. If any clause, sentence, section, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, sec-

tion, paragraph or part thereof directly adjudged to be invalid or inoperative.

History: En. Sec. 8, Ch. 151, L. 1929.

CHAPTER 292

IMPROVEMENT OF LIVESTOCK

- Section 3351. County assessor to collect names of owners of pure-bred stock.
3352. Delivery of information to experiment station.
3353. Official books of breed association.
3354. Publication of owners of pure breeds—bulletins.
3355. Sale of animals under false registration certificates—changing markings—auctioneer.
3356. Penalty for violation of preceding section.

3351. County assessor to collect names of owners of pure-bred stock. The county assessor in each county during the odd-numbered years shall, in the regular routine of his duties, collect the names and addresses of all owners or breeders of pure-bred horses, cattle, sheep, swine, and poultry in the county, and in each case secure the name of the breed.

History: En. Sec. 1, Ch. 6, L. 1913; re-en. Sec. 3351, R. C. M. 1921.

3352. Delivery of information to experiment station. On or before the first day of November, the assessor shall compile the information secured, and deliver same to the director of the Montana agricultural experiment station, located at Bozeman.

History: En. Sec. 2, Ch. 6, L. 1913; re-en. Sec. 3352, R. C. M. 1921.

3353. Official books of breed association. Pure-bred animals are those recorded in the official books of the various breed associations. A list of these books shall be furnished to the assessor of each county by the director of the Montana agricultural experiment station, and the assessor shall accept as pure-breeds only such breeds as are given in this list as shown by certificates of registration in the possession of the owner.

History: En. Sec. 3, Ch. 6, L. 1913; re-en. Sec. 3353, R. C. M. 1921.

3354. Publication of owners of pure breeds—bulletins. On or before the first day of January of the even-numbered years, the director of the experiment station shall prepare for publication and cause to be printed a bulletin giving the names and addresses of all owners and breeders of pure-bred livestock in the state of Montana, as reported the previous year by the county assessors. This bulletin shall be for free distribution in the state of Montana, and on request, to breeders and farmers outside the state.

History: En. Sec. 4, Ch. 6, L. 1913; re-en. Sec. 3354, R. C. M. 1921.

3355. Sale of animals under false registration certificates—changing markings—auctioneer. No person, or persons, company, or corporation shall sell to another person or persons, any animal with a certificate of registration or breeding that does not belong to said animal; nor change in any way the certificate of registration or breeding of any animal; nor shall any person or persons, company, or corporation falsely represent any production record of any cow or of any dam, specified in any registration certificate; nor shall any person change the markings of any animal with the intent to deceive the purchaser. Providing that this act shall not apply

to any auctioneer or agent acting in good faith under the direction of the owner.

History: En. Sec. 5, Ch. 6, L. 1913; re-en. Sec. 3355, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1933.

3356. Penalty for violation of preceding section. Any person or persons, company, or corporation violating the preceding section shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment of not less than ten days or more than six months, or by both fine and imprisonment.

History: En. Sec. 6, Ch. 6, L. 1913; re-en. Sec. 3356, R. C. M. 1921.

CHAPTER 293

STALLIONS AND JACKS—STALLION REGISTRATION BOARD

- Section 3357. Enrollment or registration of stallion or jack—license.
3358. Stallion registration board.
3359. Personnel of board—secretary.
3360. Certificate of pedigree of animal.
3361. Disqualifying diseases.
3362. Temporary license certificates.
3363. Imported animals—certificate of soundness.
3364. Posting copies of license certificate.
3365. Form of license certificate.
3366. Bills, posters, or advertisements—contents.
3367. Fees for examination and license.
3368. Transfer of license on sale of animal.
3369. Penalty for violation of act.
3370. Use of funds derived from fees.
3371. Annual report of board to governor—inspection of financial records.
3372. Law not applicable to range animals—“standing for public service” defined.
3373. Transportation of animals by railroad.

3357. Enrollment or registration of stallion or jack—license. Every person, firm, or company, standing or using any stallion or jack for public service in this state, shall cause the name, description, and pedigree of such stallion or jack to be enrolled by a stallion registration board, hereinafter provided for, and shall secure a license from said board as provided for in section 3360 of this code. All enrollment and verification of pedigree shall be done by said board.

History: En. Sec. 1, Ch. 108, L. 1909; re-en. Sec. 3357, R. C. M. 1921.

3358. Stallion registration board. In order to carry out the provisions of this act, there shall be constituted a stallion registration board, whose duty it shall be to verify and register pedigrees; to employ one or more competent graduate veterinarians to make examinations of the stallions for soundness, at one or more points in each county in the state; to pass upon certificates of veterinary examination; to issue stallion license certificate; to make all necessary rules and regulations; and to perform such other duties as may be necessary to carry out and enforce the provisions of this act. Said board shall hold an annual meeting at the college of agriculture in Bozeman the first Tuesday of February, and such other meetings as may be necessary.

History: En. Sec. 2, Ch. 108, L. 1909; re-en. Sec. 3358, R. C. M. 1921.

3359. Personnel of board—secretary. The stallion registration board shall be composed of the president of the Montana horse breeders' associa-

tion, the state veterinarian, and the professor of animal husbandry at the Montana experiment station, who shall be secretary and executive officer of this board.

History: En. Sec. 3, Ch. 108, L. 1909; re-en. Sec. 3359, R. C. M. 1921.

3360. Certificate of pedigree of animal. In order to secure the license certificate herein provided for, the owner shall apply for such to the stallion registration board, after the stallion or jack has been examined for soundness. The owner of such stallion or jack shall furnish to the stallion registration board the veterinary certificate and book registry certificate of pedigree of the stallion or jack, and all other necessary papers relating to his breeding and ownership. Upon verification of pedigrees and certificate of breedings, a stallion or jack certificate shall be issued to the owner.

History: En. Sec. 4, Ch. 108, L. 1909; re-en. Sec. 3360, R. C. M. 1921.

3361. Disqualifying diseases. The presence of any one or more of the following-named diseases shall disqualify a stallion or jack for public service, except such stallions or jacks as were in public use, or held for sale for public use at the time of the enactment and passage of this act: Such diseases or unsoundness hereby defined as infectious, contagious, or transmissible diseases or unsoundness for the purpose of this act; cataract, amaurosis, laryngeal hemiplegia (roaring or whistling), chorea (St. Vitus' dance), crampiness, shivering, spring-halt, bone-spavin, ring-bone, side-bone, glanders, farcy, maladie de coit, urethral gleet, mange, melanosis, and curb when accompanied by curby hock.

The stallion registration board is hereby authorized to refuse certificate of enrollment to any stallion or jack affected with any one of the diseases specified, and to revoke previously issued stallion license certificate of any stallion or jack found on examination to be so affected, except stallions or jacks in the state at the time of the enactment and passage of this act.

No stallion or jack shall stand for public service in the state of Montana which is deformed or so badly diseased as to be, in the opinion of the stallion registration board, wholly unfit for breeding purposes, and said board is hereby authorized to refuse license certificate and registry for said animal.

History: En. Sec. 4, Ch. 108, L. 1909; re-en. Sec. 3361, R. C. M. 1921.

3362. Temporary license certificates. The stallion registration board is authorized in cases of emergency to grant temporary license certificates without veterinary examination, upon the receipt of an affidavit of the owner to the effect that to the best of his knowledge and belief said horse or jack is free from infectious, contagious, or transmissible disease, or unsoundness. Temporary license certificates shall be valid only until veterinary examination can reasonably be made.

Stallions or jacks in the state previous to the passage and enactment of this law shall have described in their license certificate any hereditary disease or unsoundness referred to in the preceding section.

History: En. Sec. 5, Ch. 108, L. 1909; re-en. Sec. 3362, R. C. M. 1921.

3363. Imported animals—certificate of soundness. Every person, firm, or company, importing any stallion or jack into the state of Montana for

breeding purposes, shall first secure a certificate from a recognized state or federal veterinary officer, certifying that said animal is free from any or all diseases or unsoundness referred to in section 3361 of this code.

A copy of this certificate must be mailed to the secretary of the stallion registration board, at the Montana experiment station, Bozeman, Montana, at least ten days before the importation of said stallion or jack into the state.

No stallion or jack which is neither pure-bred nor grade according to the meaning of this act shall be imported into this state for breeding purposes.

History: En. Sec. 6. Ch. 108, L. 1909; re-en. Sec. 3363, R. C. M. 1921.

3364. Posting copies of license certificate. The owner of any stallion or jack standing for public service in this state shall post and keep affixed during the entire breeding season, copies of the license certificates of such stallion or jack issued under the provisions of this act, in a conspicuous place upon the main door leading into every stable or building where said stallion or jack stands for public service. Said copies shall be printed in bold-faced and conspicuous type, not smaller than small pica, especially the words "pure-bred," "grade," etc.

History: En. Sec. 7, Ch. 108, L. 1909; re-en. Sec. 3364, R. C. M. 1921.

Certificate as Proof

Where in an action to recover the purchase price of a jack bought for breeding purposes in which the defense was false representations, plaintiff made an offer of proof to show that defendant had exhibited at his place a license to breed the animal as required by this section, and

had advertised it as free from disease, the offer was properly refused, it appearing that defendant at the trial had disclaimed any intention of claiming that the jack was affected with disease, and in the absence from the offer of the date of the advertisement, based upon the certificate of license issued long prior to the time defendant found the animal not as represented by the seller. *Howard v. Fraser*, 83 M 194, 198, 271 P 444.

3365. Form of license certificate. The license certificate issued after proper examination of a stallion or jack whose sire and dam are of pure breeding, and the pedigree certificate of which is registered in a stud book recognized by the Montana stallion registration board, and, in the case of foreign pedigree certificate, those which are registered in a stud book recognized by the United States department of agriculture, shall be in the following form:

Stallion Registration Board.

License Certificate of Pure-bred Stallion or Jack.

The pedigree of the stallion (name).....
 owned by, bred by,
 described as follows:
 color, breed,
 foaled in the year, has been examined by the Stallion
 Registration Board of Montana, and it is hereby certified that the said
 stallion or jack is of pure breeding, and is registered in a stud book recog-
 nized by said Stallion Registration Board.

The above-named stallion or jack has been examined by the veterinarian appointed by the Stallion Registration Board, and is reported as free from

infectious, contagious, or transmissible diseases or unsoundness (or is affected with.....), and is licensed to stand for public service in the state of Montana.

Signed

Secretary, Stallion Registration Board of Montana.

The license certificate issued after proper examination for a stallion or jack whose sire or dam, but not both, is of pure breeding shall be in the following form:

Stallion Registration Board.

License Certificate of Grade Stallion or Jack.

The pedigree of the stallion (name)
owned by, bred by,
described as follows:
color, breed,
foaled in the year, has been examined by the Stallion
Registration Board of Montana, and it is hereby certified that the said
stallion or jack is not of pure breeding, and is therefore not eligible for
registration in any stud book recognized by the Stallion Registration Board.

The above-named stallion or jack has been examined by the veterinarian
appointed by the Stallion Registration Board, and is reported as free from
infectious, contagious or transmissible diseases or unsoundness (or is af-
fected with), and is licensed to
stand for public service in the state of Montana.

Signed

Secretary, Stallion Registration Board of Montana.

History: En. Sec. 8, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915; re-en. Sec. 3365, R. C. M. 1921.

3366. Bills, posters, or advertisements—contents. Every bill, poster, or advertisement issued by the owner of any stallion or jack licensed under this act, or used by him for advertising such stallion or jack, shall contain a copy of his license certificate, and shall not contain illustrations, pedigrees, or other matter that is untruthful or misleading.

History: En. Sec. 9, Ch. 108, L. 1909; re-en. Sec. 3366, R. C. M. 1921.

3367. Fees for examination and license. A fee of ten dollars shall be paid to the secretary of the stallion registration board for the veterinary examination of stallions and jacks and enrollment of each pedigree and the issuance of a license certificate.

A fee not exceeding two dollars shall be paid annually for the renewal of the license. Stallions or jacks shall be examined every four years, until ten years of age, and after the first examination shall be exempt from examination at ten years of age and over.

History: En. Sec. 10, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915; re-en. Sec. 3367, R. C. M. 1921.

3368. Transfer of license on sale of animal. Upon a transfer of the ownership of any stallion or jack licensed under the provisions of this act, the license certificate may be transferred by the secretary of this

board to the transferee upon the submittal of satisfactory proof of such transfer of ownership and upon the payment of one dollar.

History: En. Sec. 11, Ch. 108, L. 1909; re-en. Sec. 3368, R. C. M. 1921.

3369. Penalty for violation of act. Any person or persons knowingly or wilfully violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for not less than thirty days or more than six months, or by fine and imprisonment for each offense.

History: En. Sec. 12, Ch. 108, L. 1909; re-en. Sec. 3369, R. C. M. 1921.

3370. Use of funds derived from fees. The funds accruing from the above-named fees shall be used by the stallion registration board to defray the expenses of veterinary examination, of enrollment of pedigrees, and issuance of licenses. Any funds not so used shall be used to publish reports or bulletins containing lists of stallions examined; to encourage the horse and mule breeding interests of this state; to disseminate information pertaining to horse breeding, and for any other such purposes as may be necessary to carry out the purposes and enforce the provisions of this act.

History: En. Sec. 13, Ch. 108, L. 1909; re-en. Sec. 3370, R. C. M. 1921.

3371. Annual report of board to governor—inspection of financial records. It shall be the duty of this board to make annual report, including financial statements, to the governor of the state, and all financial records of said board shall be subject to inspection at any time by the public examiner.

History: En. Sec. 14, Ch. 108, L. 1909; re-en. Sec. 3371, R. C. M. 1921.

3372. Law not applicable to range animals—"standing for public service" defined. No part of this act shall apply to stallions turned upon the open range, and the term "standing for public service" is hereby defined as the service of a stallion or jack for a fee when said stallion or jack is stood at one or more places for a public use.

History: En. Sec. 15, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915; re-en. Sec. 3372, R. C. M. 1921.

3373. Transportation of animals by railroad. No railroad company, transportation company, or common carrier shall transport into the state of Montana any stallion or jack unless accompanied by a state or federal veterinary certificate as provided in this act. Violation of this provision shall be punished as provided in section 3369 of this code.

History: En. Sec. 16, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915; re-en. Sec. 3373, R. C. M. 1921.

CHAPTER 294

FENCES—LEGAL FENCE—LIABILITY OF OWNERS FOR TRESPASSING STOCK

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| Section 3374. | Legal fence defined. |
| 3375. | Penalty for violation. |
| 3376. | Barbed wire fence to be kept in repair. |
| 3376.1. | Fallen wire fencing declared nuisance—abatement. |
| 3376.2. | Notice to owner to repair fence—duty of county commissioners. |
| 3376.3. | Procedure when owner unknown or not resident of state—sale of wire removed. |
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- 3377. Damage to planted trees.
- 3378. Liability of owners of stock for trespass.
- 3379. Stock trespassing may be retained.
- 3380. Marking land and mining claims in national forest.
- 3381. Method of marking.
- 3382. Marking—right of action against trespassing stock.
- 3383. Partition fences.

3374. Legal fences defined. Any one of the following, if not less than forty-four inches nor more than forty-eight inches in height, shall be a legal fence in the state of Montana:

1. All fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than fifteen inches nor more than eighteen inches from the ground, securely fastened as nearly equidistant as possible to substantial posts, firmly set in the ground, or to well-supported leaning posts, not exceeding twenty feet apart, or thirty-three feet apart where two or more stays or pickets are used equidistant between posts; provided, that all corral fences which are used exclusively for the purposes of inclosing stacks which are situated outside of any lawful inclosure shall not be less than sixteen feet from such stack so inclosed, and shall be substantially built with posts not more than eight feet distant from each other and not less than five strands of well-stretched barb wire, and shall not be less than five nor more than six feet high; provided, further, that any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

2. All fences constructed of any standard woven wire not less than twenty-eight inches in height, securely fastened to substantial posts not more than thirty feet apart, shall be a legal fence; provided, that two equidistant barbed wires shall be placed above the same at a height of not less than forty-eight inches from the ground.

3. All other fences made of barbed wire, which shall be as strong and as well calculated to protect inclosures as those above described, shall be considered legal fences.

4. All fences consisting of four boards, rails, or poles, with standing or leaning posts not over seventeen feet and six inches apart; provided, that if leaning posts are used, there shall be a pole or wire fastened securely on the inside of the leg or support of such leaning post.

5. All rivers, hedges, mountain ridges and bluffs, or other barrier over or through which it is impossible for stock to pass.

History: Ap. p. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919; re-en. Sec. 3374, R. C. M. 1921.

Operation and Effect

The provisions of this section et seq., relative to legal fences, prescribing what are such fences, and defining the duty to maintain and repair partition fences, do not affect the right of an adjoining owner to build a division fence partly on the other's land. *Hoar v. Hennessy*, 29 M 253, 261, 74 P 452.

Trespass on Unfenced Lands

Where a livestock owner, claiming a strip of land thirty feet wide and one-half mile in length within plaintiff's inclosure, turned his cattle loose under circumstances which showed that it was intended that they should go into plaintiff's inclosure and grazed upon his lands, he was liable for the damage done by them to plaintiff's pasture, the fact that plaintiff did not maintain any fence between the strip and defendant's land being no defense. *Dorman v. Erie*, 63 M 579, 583 et seq., 208 P 908.

A lawful fence entirely surrounding his lands is a condition precedent to the right of a land owner to recover damages from

owners of livestock trespassing thereon, unless the latter with knowledge of the private ownership of unfenced land willfully herds them thereon or drives them to a point so near the boundaries that they are certain to go upon and feed thereon. *Schreiner v. Deep Creek Stock Ass'n.*, 68 M 104, 110, 217 P 663.

References

Cited or applied as section 3250, political code, before amendment, in *Clemmons v. Gillette*, 33 M 321, 328, 83 P 879; as section 2082, revised codes, before amendment, in *Herrin v. Sieben*, 46 M 226, 232, 127 P 323.

3375. Penalty for violation. Any person constructing or maintaining any fence of any kind not described in the next preceding section is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

History: En. as Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3251, Pol. C. 1895; re-en. Sec. 2083, Rev. C. 1907; re-en. Sec. 3375, R. C. M. 1921.

3376. Barbed wire fences to be kept in repair. The owners of barbed wire fences must keep the same in repair, and any person receiving notice in writing that his barbed wire fence or any part thereof is down, or in such condition as to be likely to injure any livestock, and fails or refuses to repair such fence, is liable to pay damages in an amount equal to the value of any cattle, horse, mule, or other domestic animal which may be injured by coming into contact with the fence.

History: En. as Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3252, Pol. C. 1895; re-en. Sec. 2084, Rev. C. 1907; re-en. Sec. 3376, R. C. M. 1921.

3376.1. Fallen wire fencing declared nuisance—abatement. All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock, and a menace to any person riding or walking over the same is declared to be a public nuisance, and subject to abatement in the manner hereinafter provided.

History: En. Sec. 1, Ch. 84, L. 1927.

3376.2. Notice to owner to repair fence—duty of county commissioners. Upon ascertaining the existence in the county of any nuisance specified in the preceding section of this act, the board of county commissioners shall notify by registered mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within sixty days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by the next section of this act.

History: En. Sec. 2, Ch. 84, L. 1927.

3376.3. Procedure when owner unknown or not resident of state—sale of wire removed. If there be no known owner of such wire within the state, or if such owner be unknown to the board of county commissioners, said board shall have authority to collect and remove said wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale, shall be sold by the county commissioners in the manner now provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only ten days before such sale.

History: En. Sec. 3, Ch. 84, L. 1927.

3376.4. Disposal of proceeds of sale of wire after payment of expense.

The proceeds of such sale shall be used to defray the cost of collecting and selling said wire, and the balance, if any, be placed by the county treasurer in a special fund, and shall be held by him subject to claim by any person establishing to the satisfaction of the board of county commissioners that he was the lawful owner of said wire and entitled to the remaining proceeds of such sale. If no person claims said money within one year of the date of sale, the same shall be deposited in the general fund of the county.

History: En. Sec. 4, Ch. 84, L. 1927.

3377. Damage to planted trees. In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than five feet.

History: En. Sec. 3281, Pol. C. 1895; re-en. Sec. 2096, Rev. C. 1907; re-en. Sec. 3377, R. C. M. 1921.

3378. Liability of owners of stock for trespass. If any cattle, horse, mule, ass, hog, sheep, or other domestic animal break into any enclosure, the fence being legal, as hereinbefore provided, the owner of such animal is liable for all damages to the owner or occupant of the enclosure which may be sustained thereby. This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

History: En. Sec. 1119, 5th Div. Comp. Stat. 1887; re-en. Sec. 3258, Pol. C. 1895; re-en. Sec. 2090, Rev. C. 1907; re-en. Sec. 3378, R. C. M. 1921.

Complaint—Sufficiency

In an action on an implied contract to recover the reasonable value of the pasturage of livestock, the complaint alleging ownership and right of possession in plaintiff, the ownership of the animals in defendant, that the lands were inclosed by a fence which defendant broke down and pastured them thereon, and the reasonable value of the pasturage per head per month, stated a cause of action. *Dorman v. Erie*, 63 M 579, 584, 208 P 908.

Operation and Effect

A reasonable and substantial compliance with the statute is all that is required, and an immaterial variation in the height of the fence from that of a lawful fence will not defeat the action. *Smith v. Williams*, 2 M 195, 202.

The provisions of this section apply to all domestic animals, but have no application to animals in charge of a herder. *Herrin v. Sieben*, 46 M 226, 232, 127 P 323.

Trespass on Unfenced Land

A lawful fence entirely surrounding the grounds or premises entered, or some obstruction equivalent thereto, is a condition precedent to the right to bring an action against the owner of trespassing animals for damages sustained by reason of such trespass. *Smith v. Williams*, 2 M 195, 201.

There can be no recovery for damages sustained to the owner of uninclosed lands by reason of sheep straying or being driven thereupon and destroying the grass and verdure, unless it appear that they were maliciously driven upon such lands for the purpose of causing injury. *Fant v. Lyman*, 9 M 61, 62, 22 P 120.

This section, and the custom of the state making the maintenance of a legal fence by a land owner a prerequisite to recovery for trespass by domestic animals of another, do not charge the landowner with the duty to keep cattle lawfully at large from coming on his land, or make their entry thereupon rightful, so as to make him liable for injuries to such animals caused by the existence of dangerous agencies on the land, but not wantonly or intentionally caused. *Beinhorn v. Griswold*, 27 M 79, 88, 69 P 557.

This section applies to trespasses committed by animals running at large without the knowledge of the owner, and not to a case where one knowingly and wilfully appropriates the use of another's land. *Monroe v. Cannon*, 24 M 316, 320, 61 P 863. See, also, *Musselshell Cattle Co. v. Woolfolk*, 34 M 126, 132, 85 P 874; *Rea Bros. Sheep Co. v. Rudi*, 46 M 149, 161, 127 P 85; *Light v. United States*, 220 U. S. 523, 537, 55 L. Ed. 570, 31 Sup. Ct. 485.

The owner of animals may not knowingly and wilfully drive or herd them upon the lands of another, whether such lands are protected by an inclosure or not, and

to avoid encroaching upon his neighbor he must at his peril ascertain the line at which his rights end and his neighbor's begin. *Herrin v. Sieben*, 46 M 226, 233, 127 P 323.

Where a livestock owner, claiming a strip of land thirty feet wide and one-half mile in length within plaintiff's inclosure, turned his cattle loose under circumstances which showed that it was intended that they should go into plaintiff's inclosure and graze upon his lands, he was liable for the damage done by them to plaintiff's pasture, the fact that the plaintiff did not maintain any fence between the strip and defendant's land being no defense. *Dorman v. Erie*, 63 M 579, 584, 208 P 908.

Held, that where plaintiff, the owner of uninclosed lands within a forest reserve in which defendants had a permit to graze their cattle, in his action for damages for depasturing his land relied upon the allegation in the answer that defendants were

running their cattle "under herd" and "in charge of herders" as an admission that the animals were placed upon his premises by defendants' agents and did not introduce evidence that they were willfully or negligently driven or permitted to remain thereon, it appearing on the contrary that the herders endeavored to keep them off of his premises and drove them therefrom when found there, a judgment in his favor was unwarranted under the above rules. *Schreiner v. Deep Creek Stock Assn.*, 68 M 104, 110, 217 P 663.

Unlawful Fencing of Public Domain

A person who unlawfully fences a portion of the public domain acquires only a tortious possession, which does not authorize him to maintain an action against another for depasturing such land, nor entitle him to restrain the latter, by way of injunction, from continuing to depasture the land. *Clemmons v. Gillette*, 33 M 321, 328, 83 P 879.

3379. Stock trespassing may be retained. If any such animal breaks into an enclosure surrounded by a legal fence, or is wrongfully upon the premises of another, the owner or occupant of the enclosure or premises may take into his possession the animal trespassing, and keep the same until all damages, together with reasonable charges for keeping and feeding are paid. The person taking any such animal into his possession shall, within seventy-two hours thereafter, give written notice to the owner or person in charge of the animal, stating that he has taken up such animal; said notice shall also give the date of such taking, the description of the animal or animals taken up, including marks and brands, if any, the amount of damages claimed and the charge per head per day for caring for and feeding the same, and shall describe, either by legal subdivisions or other general description, the location of the premises upon which said animals are held. In all cases a copy of said notice shall likewise be posted at a point where said stock was taken up. Such notice shall be given to the owner or person in charge only when said owner or person in charge of the animal or animals is known to the person taking up the same and resides within twenty-five miles of the premises upon which such animals have been taken up. In case the owner or person in charge of such animals resides more than twenty-five miles from the place of such taking, notice as aforesaid shall be mailed to him, and in such case, and also in case the owner be unknown, a like notice shall be mailed to the Montana livestock commission and the sheriff of the county in which such animals have been taken up. Upon receipt of such notice, the sheriff shall post a copy thereof at the court house and shall send by registered mail a copy thereof to the owner of the stock, if known to him; if unknown to him, the sheriff shall send a copy of such notice to the nearest state livestock inspector. In case the parties do not within five days thereafter agree as to the amount of damages, the lien claimant must within ten days thereafter institute a civil action to foreclose his lien in any court of competent jurisdiction, pending the outcome of which suit, the person taking up said stock may, at the ex-

pense of the owner, retain a sufficient amount of such stock to cover the amount of damages claimed by him; provided, however, that the defendant may, after the institution of an action as aforesaid, upon filing in said cause a bond executed by two or more sureties and approved by the court, in double the sum sued for, conditioned for the payment to the plaintiff of all sums, including costs that may be recovered by said plaintiff, have the return to him of all livestock held as aforesaid, and said person shall be liable to such owner for any loss or injury to said stock occurring through his fault or neglect. If the person taking up said stock shall fail to recover in said action a sum equal to that offered him by the owner of the stock, the former shall bear the expense of keeping and feeding same while in his possession.

Any person taking or rescuing any such animal from the possession of the person taking the same, without his consent, is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en. Sec. 3379, R. C. M. 1921.

his premises, but his demand was for only two hundred and eighty-six dollars, a justice's court had jurisdiction of the cause. Reynolds v. Smith, 48 M 149, 150, 135 P 1190.

Jurisdiction of Court

Where plaintiff might have sued under this section for three hundred and fifty dollars because of the wrongful rescue of animals which had been trespassing upon

References

Cited or applied as section 3259, political code, in Hoar v. Hennessy, 29 M 253, 261, 74 P 452.

3380. Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented mining claims, which said lands or patented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921.

3381. Method of marking. For the purposes of this act, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided, that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

History: En. Sec. 2, Ch. 222, L. 1921; re-en. Sec. 3381, R. C. M. 1921.

3382. Marking—right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule re-

ardless of whether the said sheep so trespassing strayed thereon on their own inclination and without being driven, or whether said sheep were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the land owner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927.

3383. Partition fences. Certain regulations relating to partition fences are found in sections 6778 to 6782 of the civil code.

History: New section recommended by code commissioner, 1921.

CHAPTER 295

HERD DISTRICTS

- Section 3384. Herd districts—creation, size, location—dissolution—exclusion of government land—records.
3385. Penalty for permitting animals to run at large in herd districts—permitting bull to run at large in herd districts constitutes misdemeanor.
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- 3389.5. Retention and sale of horses for damages and care—procedure—classification of horses for sale—disposal of proceeds—“horses” defined.
- 3389.6. Petition to dissolve horse herd district—hearing and notice—order of county commissioners.
- 3389.7. Liability of officers.
- 3389.8. Existing statutes not affected.

3384. Herd districts—creation, size, location—dissolution—exclusion of government land—records. (a) Herd districts may be created in any county in the state of Montana to contain fifty-four square miles or more, lying not less than three miles in width, outside of the incorporated cities; excepting only that herd districts may be created containing not less than six nor more than fifty-four square miles, lying not less than two miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of ten thousand or more and such territory so to be created in a herd district has a suburban population of not less than two hundred people; upon petition of owners or possessors of fifty-five per centum (55%) of the land in such district, and providing twenty-five per centum (25%) or more of the land in such district is in actual cultivation, and such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition, properly signed, giving outside boundaries and description of proposed dis-

trict and the post office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto, and shall give not less than twenty days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district, and should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four weekly publications in some newspaper nearest the district of the creation of such districts, also stating period such districts will be in effect, and such districts shall not be in effect until thirty days have expired after the order. Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest. And the board of county commissioners shall remove the name of the lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

(b) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such district, and that less than twenty-five per cent (25%) of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting; and at said meeting by its order the said board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for three successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, and that less than twenty-five per cent (25%), of the lands included in such district are in actual cultivation, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the herd district affected thereby shall be dissolved for all purposes thereafter.

(c) Any tract of land embraced within any established herd district and which contains eighteen government sections of land, or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice and hearing and by a like order as in the case of proceedings for dissolving herd districts; provided that when the exclusion of any such tract of land from an existing herd district is sought the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of fifty-five per cent (55%), or more of the lands lying within the boundaries of the tract to be excluded, and that less than fifteen per cent (15%), of the lands included in such tract is in actual cultivation; and provided further that in any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition which shall be further set forth with common certainty in the order is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931.

Notice to Land Owners Jurisdictional

Citing prior to amendment by chapter 171, laws of 1931, the notice required by this section to be given by the board of county commissioners of the presentation of a petition for the creation of a herd district, to land owners in the proposed district, is jurisdictional, substantial compliance with the requirements of the statute being indispensable to action by the board. *State v. Board of County Commissioners*, 83 M 540, 547, 273 P 290.

Width of District at Point Where City Located

Where the record on appeal from a judgment dismissing a writ of certiorari asking that an order of the county commissioners creating a herd district be annulled for lack of jurisdiction did not show that a county seat lying within the district was an incorporated city, the contention of relator that upon elimination of the area embraced within the city limits the district was less than three miles in width, contrary to the provision of this section requiring such a district to be at least that width "outside of in-

corporated cities," may not be upheld. *State v. Board of County Commissioners*, 83 M 540, 547, 273 P 290.

Width of District Where Boundary from Which Measurement Made a River

This section provides that a herd district must be at least three miles in width. A petition for the creation of such a district, lying north and south, showed that its eastern boundary was a river bank and that its width, measured at right angles to the base line (a line projected as nearly parallel to the course of the river) was at all points at least three miles in width and at some more than three miles. The sufficiency of the petition was attacked on the ground that at the point where the river formed a bend toward the west extending about two miles within the territory of the proposed district, the distance between the peak of the bend and a point on the western boundary, when measured at an acute angle northwestward, was but a mile and a half. Held that the width of a tract of land must be measured at right angles to its length; that so measured the width was all that was required by the above section and that the width at the point mentioned did not render the petition insufficient. *State v. Board of County Commissioners*, 83 M 540, 547, 273 P 290.

3385. Penalty for permitting animals to run at large in herd districts—permitting bull to run at large in herd districts constitutes misdemeanor. Any person who is the owner, or entitled to the possession of any horses, mules, cattle, sheep, or goats, who shall wilfully permit same to run at large within any herd-district, shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than one dollar, nor more than five dollars for each offense; and each day that each five head, or less, of such horses, mules, cattle, sheep, or goats, are wilfully permitted to run at large shall constitute a separate offense.

Any person, who is the owner, or entitled to the possession of any bull over one (1) year of age who shall wilfully permit same to run at large within any herd-district shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than ten (\$10.00) dollars, nor more than fifty (\$50.00) dollars for each offense; and each day that such bull be permitted to run at large shall constitute a separate offense.

History: En. Ch. 74, L. 1917; amd. Sec. 3, Ch. 167, L. 1919; re-en. Sec. 3385, R. C. M. 1921; amd. Sec. 1, Ch. 45, L. 1925.

Strict Compliance Necessary

The provisions of the herd law must be strictly followed in order to afford protec-

tion to those responsible for the impounding and sale of animals under its authority, and where they are not so followed, the taking constitutes a taking of private property without due process of law and a conversion of the property. *Jorgenson v. Story et al.*, 78 M 477, 487, 254 P 427.

3386. Trespassing animals in herd district—retention for damages and keep. If any such animal or animals wrongfully enter upon premises of any person within such district, the owner or person in control of such animal or animals shall be liable for care and feed and for any damages occasioned by such livestock to the landowner. The owner or occupant of the land upon which such wrongful entry is made may take into his possession such animal or animals, and reasonably care for the same, and may retain possession thereof and be entitled to a lien thereon as security for the payment of damages and charges occasioned by such livestock. If the owner of such livestock, or the person entitled to the possession thereof, can be found or is known to the person who takes it up for trespass, it shall be his duty to notify the owner, owners, or persons in charge thereof, within forty-eight (48) hours after taking possession thereof, by a notice in writing, duly mailed as a registered letter, directed to such owner or person in charge at his post office address or by serving such notice on him personally, which notice shall give a particular description of the livestock and state the amount of damages claimed, and demand that within forty-eight (48) hours after receipt of such notice the damages and costs be paid and that the animal or animals be taken away from the property of the complainant. Upon demand, the owner or occupant of the land shall release and deliver possession of such stock to the owner or person entitled thereto, upon payment of the damages and charges, and if the parties cannot agree upon the amount, then and in that event, the owner or person entitled to said stock shall give a receipt to the owner or occupant of the land having possession of the same, which receipt shall fully describe the animal or animals so that they may at any time be easily identified, and

thereupon the owner or occupant of the land shall give possession of such livestock to the owner or person entitled thereto, making claim therefor. The owner or person so receiving possession of such livestock shall not dispose of the same but shall retain and keep the same in his possession as the legal custodian thereof in order to meet and pay the amount of the lien thereon for damages and charges due in consequence of any such trespass. The party entitled to such damages or charges shall within ten (10) days after delivery of possession of such livestock commence an action in any court having jurisdiction to recover such damages and charges, and such livestock shall be held for the payment of any judgment as effectually as though held under a writ of attachment. At any time after such action is commenced, the owner or person entitled to the stock, to whom delivery of possession was made, may furnish and file a bond conditioned to pay the damages, charges and costs incurred in the action and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the livestock shall thereupon be discharged. If the owner or person entitled to such livestock does not furnish such a bond within ten (10) days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the stock to satisfy any judgment which may be recovered in the action, and such stock, when so taken possession of by the officer shall be held, treated and sold under execution the same as though seized and held in the first instance by writ of attachment. The owner or person entitled to the stock may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment which may be recovered in such action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to the livestock, after delivery of possession to him without payment of damages and charges herein provided for, shall sell or dispose of the same or any part thereof, or permit the same to be taken from his possession, or shall in any manner prevent the seizure of the same by the constable or sheriff, as herein provided, before the lien thereon is fully discharged, he shall be guilty of a misdemeanor and in addition thereto shall be liable to the party entitled to such damages and charges in double the value of the stock. At the time of delivery or possession of such stock, the owner or person entitled thereto, a written statement of the amount of the damages and charges shall be furnished to the owner or person entitled to the possession of the stock by the person claiming such damages and charges. If the owner or claimant of such stock is not known to the person taking up such stock he shall give notice thereof within forty-eight (48) hours by posting a notice at the nearest post office and serving a like notice on the stock inspector of the district, which notice shall describe each animal or animals, the brand thereon, and give a minute description thereof, together with the date of the trespass.

History: En. Ch. 74, L. 1917; amd. Sec. 4. Ch. 167, L. 1919; re-en. Sec. 3386, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1931.

Strict Compliance Necessary

The provisions of the herd law must be

strictly followed in order to afford protection to those responsible for the impounding and sale of animals under its authority, and where they are not so followed, the taking constitutes a taking

of private property without due process of law and a conversion of the property. *Jorgenson v. Story et al.*, 78 M 477, 487, 254 P 427.

3387. Former proceedings for the formation of herd districts validated. All herd districts heretofore formed or attempted to have been formed under section 1, chapter 74 of the session laws of the fifteenth legislative assembly of the state of Montana, where the proceedings taken have complied with requirements of section 3384 of this code, shall be and are hereby declared to have been properly formed and valid, and said proceedings are hereby expressly validated, and such districts shall constitute herd districts, and be subject to all the provisions of this act and of law affecting said districts.

History: En. Sec. 5, Ch. 167, L. 1919; re-en. Sec. 3387, R. C. M. 1921.

3388. Rescue of impounded animals a misdemeanor—penalty. Any person who takes or rescues any animal impounded as provided in section 3386 from the possession of the person in whose custody the same may be, without his consent, shall be guilty of a misdemeanor, and upon conviction therefor be subject to a fine of not more than one hundred dollars, or shall be confined in the county jail not more than sixty days, or both such fine and imprisonment.

History: En. Sec. 6, Ch. 167, L. 1919; re-en. Sec. 3388, R. C. M. 1921.

3389. Unlawful introduction of live stock into herd district a misdemeanor—penalty. Any person or persons not the owner or person in charge of any livestock, who shall drive, put, place, or introduce any livestock into any herd district established under the provisions of this act, or who shall so place, move, or interfere with such livestock that they will trespass on such herd district, shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine of not less than fifty dollars, or shall be confined in the county jail not less than sixty days, or both such fine and imprisonment, and shall be liable for all damages and costs occurring from such trespass; and for the purposes of this act each separate animal so moved, placed, or interfered with, shall constitute a separate offense.

History: En. Sec. 7, Ch. 167, L. 1919; re-en. Sec. 3389, R. C. M. 1921.

3389.1. Changing time when herd districts will be in effect—petition—notice—hearing. The time of year or period, when any herd district heretofore or hereafter created under the provisions of the laws of this state, is effective or will be in effect, may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county, a petition signed by the owners or possessors of fifty-five per centum (55%) of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county, shall set a date for hearing protests and verifying the signatures thereto, and shall give not less than twenty (20) days' notice of the same by posting five (5) notices of hearing in five (5) public places in the county, one (1) of which shall be at the place such

hearing is to be held, and at least two (2) of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four (4) weekly publications in some newspaper in the county, nearest such district, stating the period such district will be in effect; providing, the change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

History: En. Sec. 1, Ch. 78, L. 1931.

3389.2. Horse herd districts—size—location—petition—notice and hearing—abolishment. Horse herd districts may be created in any county in the state of Montana to contain twelve square miles or more lying not less than one mile in width outside of incorporated cities or towns, upon the petition of owners or possessors of fifty-five per centum of the land of such district, and such petition shall designate the months of the year when horse herd district regulations are effective and upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the postoffice address of the signers thereof, with the clerk and recorder in the county in which the said district is being created; the county commissioners of such county upon receipt thereof shall set a date for hearing protests and verification of signatures thereto, and shall give not less than twenty days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district, and should it appear to such county commissioners, after such hearing, that the signatures attached to such petition were genuine, they shall immediately make an order declaring such horse herd district created and established; after which the county commissioners must give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when such horse herd district will be in effect and when such district shall not be in effect; providing such order shall not be effective until thirty days have expired after the order; provided that such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd district, the estimated expense of all publications required by this act shall be paid by the petitioners, and no part thereof shall be paid by the county.

Upon petition of any owner or possessor of land lying contiguous and adjoining any herd district heretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in such herd district and become a part thereof.

Should the signature of a lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of lessee from said petition,

and no person shall be permitted to withdraw his name after the hour set for hearing same.

History: En. Sec. 1, Ch. 119, L. 1931; amd. Sec. 1, Ch. 57, L. 1933.

3389.3. Horses running at large in herd district prohibited. All horses are hereby prohibited from running at large within any horse herd district as defined in section 3389.2.

History: En. Sec. 2, Ch. 119, L. 1931.

3389.4. Penalty and liability for horses wrongfully entering on premises in horse herd district. If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of section 3389, and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.

History: En. Sec. 3, Ch. 119, L. 1931.

3389.5. Retention and sale of horses for damages and care—procedure—classification of horses for sale—disposal of proceeds—“horses” defined. The owner or occupant of the land upon which such wrongful entry is made may take into his possession such horse or horses, and shall reasonably care for the same while in his possession, and may retain possession of said horse or horses, and shall have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said horse or horses while in his possession. The person taking up said horse or horses shall within forty-eight hours after taking possession thereof notify said owner, owners or persons in charge thereof by a notice in writing, describing said horse or horses taken up, including marks and brands, if any, the amount of damages claimed, and the charge per head per day for caring for and feeding the same, and describing, either by legal sub-divisions or other general description, the location of the premises upon which said horse or horses are held, and requiring him within forty-eight hours after receiving said notice to take the said horse or horses away after making full payment for all damages and costs of said horse or horses. Such notice shall be given by personal service on the said owner, owners or person in charge thereof, or by leaving said notice at his usual place of residence with some member of his family over the age of fourteen years, or by sending said notice by prepaid registered mail addressed to his last known place of residence. Said service by registered mail shall be deemed complete upon the deposit of the notice in the postoffice. Upon demand, the owner or occupant of the land shall release and deliver possession of such horse or horses to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or person in control of such horse or horses, as hereinbefore provided. If the owner or claimant of such horse or horses is not known to the person taking up such horse or horses, or the said owner or claimant shall refuse to pay the amount of damages and charges as herein provided, the said person taking up such horse or horses shall within seventy-two hours, from the time said horse or horses were so taken up, deliver to the sheriff or a constable of the county in which

the horse or horses were so taken up, a statement containing the information required to be given in the notice hereinbefore set out, and in addition thereto, he shall mail by prepaid registered mail a copy of said statement addressed to the nearest state livestock inspector. Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses so taken up. That prior to such sale the sheriff shall have said horses classified as follows:

Class one shall include (a) horses not bearing a registered brand and which in the opinion of the stock inspector are of a value not to exceed ten dollars per head, and (b) horses bearing a registered brand, but which the owner has failed to redeem as herein provided, after notice given, and which in the opinion of the stock inspector are of a value not to exceed ten dollars per head.

Class two shall include horses bearing registered brands and which in the opinion of the stock inspector are of a value in excess of ten dollars per head.

Horses in class one shall be sold on ten days' notice posted at the court house of each county in which any portion of the district lays, and posted in three other public places in such county, one of which shall be in that portion of the district including in the county.

Horses in class two shall be sold on notice posted for twenty-one (21) days, and otherwise as notices are required to be posted for the sale of horses in class one, and such notice shall likewise be published once a week for two successive weeks before said sale in some newspaper published in the county seat of each county including any part of said district, if there be such newspaper, and if there be no newspaper published in any county comprising a part of such district, then such notice shall be published in any newspaper of general circulation in the county or counties including such district. The notice required to be published for the sale of horses in class two shall describe each horse to be sold, giving the approximate age, description and brands, if any. The proceeds of the sale shall be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, shall be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund" (giving number of district if more than one). A separate fund, styled as above specified, shall be kept by the county treasurer for each of said districts created in his county. The county treasurer shall make a record of the description of each horse, the amount received for same, and the amount of deductions, which record shall be open to public inspection; and any person making claim to the board of county commissioners at any time within one year from the date of sale, of ownership of such horse, and submitting proof of ownership to such board with such claim, to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse which shall not be so claimed within one year after such sale, shall at the expiration of said period be transferred to the general fund of the county.

The term "horses" when used in this chapter shall include any mare, gelding, stallion, colt, foal, filly, mule, jack and jenny.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933.

3389.6. Petition to dissolve horse herd district—hearing and notice—order of county commissioners. When a petition praying that any established horse herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of fifty-five (55%) per cent, or more of the lands lying within such district, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting; and at said meeting by its order the said board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week, for three successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Sec. 4A, Ch. 119, L. 1931.

3389.7. Liability of officers. No officer, board, or employee of any county, nor any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under this act; and all such acts shall be presumed to have been in good faith and in conformity with this act.

History: En. Sec. 5, Ch. 119, L. 1931.

3389.8. Existing statutes not affected. It is expressly provided that it is the intention of this legislative assembly that the enactment of this act does not repeal or amend any of the now existing statutes relating to herd districts or horses, but is intended as an additional remedy for the control of horses as herein provided.

History: En. Sec. 6, Ch. 119, L. 1931.

CHAPTER 296

ANIMALS RUNNING AT LARGE

Section 3390.	Rams and he-goats not to run at large.
3391.	Penalty.
3392.	Liability to civil damages.
3393.	Swine running at large.
3394.	Penalties.

- 3395. Disposition of fines.
- 3400.1. Male equine animals not to run on open range—definition of “open range.”
- 3400.2. Declaration of animals running at large as nuisance—abatement.
- 3400.3. Castration of animals running at large—notice to owner—expense and charges.
- 3400.4. Killing of animals running at large—notice—posting and service.
- 3400.5. Killing animal to prevent injury not prohibited.
- 3400.6. Penalty for violations.
- 3400.7. Effect of invalidity of part of act.
- 3401. Certain livestock not to run at large in municipalities.
- 3402. Punishment for permitting trespass of livestock.
- 3403. Only pure-bred bulls to run at large—limitation on time.
- 3404. Female breeding cattle, pure-bred bull to accompany.
- 3405. Penalty for violation of act.
- 3406. Taking up and castrating bulls, notice to owner.

3390. Rams and he-goats not to run at large. It is unlawful for any owner or person having the management or control of any ram or he-goat to permit the same to run at large between the first day of August and the first day of December of each year.

History: En. Sec. 76, 5th Div. Comp. Stat. 1887; re-en. Sec. 3060, Pol. C. 1895; re-en. Sec. 1881, Rev. C. 1907; re-en. Sec. 3390, R. C. M. 1921.

Operation and Effect

In an action for damages claimed to have been caused by defendant's neglect of duty imposed by this section and section 3392, plaintiff must plead non-observance of the statute and make a case bringing the defendant within the liability created thereby. *Ball Ranch Co. v. Hendrickson*, 50 M 220, 225, 146 P 278.

Id. Where simple negligence is relied on as a basis of recovery of damages caused by permitting rams to run at large, the plaintiff must prove, by a preponder-

ance of the evidence, the negligence alleged, the defendant being held to the exercise of ordinary care only. Where, however, the damages are alleged to spring from non-compliance with the duty imposed by this section, disobedience in this respect constitutes negligence per se, and makes defendant liable, if the injury was proximately caused thereby.

Id. Where rams or he-goats run at large without the tacit consent of the persons in control, or such persons make a reasonable effort to hinder or prevent them from running at large, no offense is committed and no liability is incurred, either under this section and the two succeeding sections, or in an action based upon simple negligence.

3391. Penalty. Any person violating the provisions of the preceding section is guilty of a misdemeanor, and on conviction thereof must be punished as provided in section 8837 of the penal code.

History: En. Sec. 3061, Pol. C. 1895; re-en. Sec. 1882, Rev. C. 1907; re-en. Sec. 3391, R. C. M. 1921.

NOTE.—Section 8837 was repealed by chapter 109, laws of 1921.

References

Cited or applied as section 1882, revised codes, in *Ball Ranch Co. v. Hendrickson*, 50 M 220, 228, 146 P 278.

3392. Liability to civil damages. Any person damaged by rams or he-goats running at large during the time mentioned in section 3390 of this code may recover in a civil action any damages sustained thereby.

History: En. Sec. 3062, Pol. C. 1895; re-en. Sec. 1883, Rev. C. 1907; re-en. Sec. 3392, R. C. M. 1921.

References

Cited or applied as section 1883, revised codes, in *Ball Ranch Co. v. Hendrickson*, 50 M 220, 225, 146 P 278.

3393. Swine running at large. It shall be unlawful for any owner or owners of swine to permit the same to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393, R. C. M. 1921.

3394. Penalties. Any person or persons violating the preceding section shall be deemed guilty of a misdemeanor, and, upon conviction thereof,

shall be fined in the sum of ten dollars for the first offense and in the sum of twenty dollars for each subsequent offense and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction.

History: En. Sec. 1166, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907; re-en. Sec. 3394, R. C. M. 1921.

3395. Disposition of fines. All fines collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the public schools.

History: En. Sec. 1167, Pen. C. 1895; re-en. Sec. 8840, Rev. C. 1907; re-en. Sec. 3395, R. C. M. 1921.

3396-3400. Repealed—Chapter 63, laws of 1925, and chapter 85, laws of 1931.

3400.1. Male equine animals not to run on open range—definition of “open range.” It shall be unlawful for any owner, person, firm, corporation or association having the management or control, of any stallion, ridgeling, unaltered male mule, or jackass, over the age of one year, to permit or suffer such animal to run at large on the open range. The term “open range” means all lands in the state of Montana not enclosed by a fence of not less than two wires in good repair; the term “open range” includes all highways outside of private enclosures and used by the public whether or not the same have been formally dedicated to the public.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931.

3400.2. Declaration of animals running at large as nuisance—abatement. Any such animal so running at large shall be, and it is hereby declared to be, a public nuisance, which, in addition to the means and proceedings prescribed by this act for its abatement and removal, may be abated and removed by the means and proceedings now, or hereafter to be, provided by law for the abatement or removal of public nuisances.

History: En. Sec. 2, Ch. 63, L. 1925; amd. Sec. 2, Ch. 85, L. 1931.

3400.3. Castration of animals running at large—notice to owner—expense and charges. Any person may take up and secure any such animal found running at large on the open range. After taking it up he shall, without unnecessary delay, post at the United States postoffice or as near as may be to the place where the animal was taken up, a notice truly dated and subscribed by him, or his agent, to the effect that the animal, describing it by marks and brands (if any), color, and sex, was taken up on the day named while it was running at large on the open range in the county (naming the county) and that unless claimed and removed within five days next after the date of the posting the animal will be castrated at the expense of the owner thereof. Should the owner, person, firm, corporation or association having management or control, of such animal be known to the person who took the animal up, personal service of such notice upon the owner, person, firm, corporation or association having management or control of the animal shall be the equivalent to the posting, provided, the notice if personally served may state that unless the animal is claimed and removed within two days next after the date of the notice

served personally, the animal will be castrated at the expense of the owner thereof.

If such animal so taken up be not claimed and removed within said five days or said two days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration shall be paid by the owner. If such animal be claimed within the time herein prescribed, the claimant shall pay to the person who took the animal up, the reasonable expense of the keeping and feed thereof since it was taken up, and also the sum of five dollars for the taking up and giving of the notice aforementioned; upon making such payments the claimant shall immediately remove and take away said animal.

History: En. Sec. 3, Ch. 63, L. 1925; amd. Sec. 3, Ch. 85, L. 1931.

3400.4. Killing of animal running at large—notice—posting and service.

If any such animal so running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner, or person having the management or control of it shall take the animal off the open range and restrain it from running at large thereon within ten days next after the giving of notice as hereinafter provided. The notice shall be signed by one or more taxpayers of the vicinity of the range whereon such animal be at large, and be substantially as follows:

“To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in..... county, Montana. Unless said animal be removed therefrom and restrained from running at large on open range, within ten days next after the date of this notice, it will be killed.

(Date)

(Signature or signatures).”

The notice shall be posted at the post office nearest the place where the animal was last seen on the range, and like notices in two other of the most public places in the vicinity of said range, and like notice shall at once be mailed to the owner or person having management or control of the animal, if his name and address be known.

History: En. Sec. 4, Ch. 63, L. 1925; amd. Sec. 4, Ch. 85, L. 1931.

3400.5. Killing animal to prevent injury not prohibited. This act is not intended, and it shall not be interpreted or understood, to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

History: En. Sec. 5, Ch. 63, L. 1925; amd. Sec. 5, Ch. 85, L. 1931.

3400.6. Penalty for violations. Any owner, person, firm, corporation or association violating any provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars (\$10.00) or more than twenty-five dollars (\$25.00).

History: En. Sec. 6, Ch. 63, L. 1925; amd. Sec. 6, Ch. 85, L. 1931.

3400.7. Effect of invalidity of part of act. If any provision of this act, or the application thereof to any person or circumstances, be held invalid

or inoperative, the remainder of the act, and the application, of such provision to other persons and circumstances, shall not be affected thereby.

History: En. Sec. 7, Ch. 85, L. 1931.

3401. Certain livestock not to run at large in municipalities. It is hereby provided that livestock, consisting of horses, cattle, mules, sheep, goats, and swine or any such animals shall not be allowed to run at large in any incorporated city, or in any incorporated town.

History: En. Sec. 1, Ch. 65, L. 1917; re-en. Sec. 3401, R. C. M. 1921.

3402. Punishment for permitting trespass of livestock. Any person owning livestock or having in charge any horses, mules, cattle, sheep, goats, or swine or any such animals who wilfully and unlawfully permit any such livestock to trespass, in violation of any of the provisions of this act, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be punished as such as provided by law.

History: En. Sec. 2, Ch. 65, L. 1917; re-en. Sec. 3402, R. C. M. 1921.

3403. Only pure-bred bulls to run at large—limitation on time. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon, or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a pure-bred bull of a recognized beef type; and no bull shall be turned upon, or allowed to run at large upon any such public highways, open range or national forest reserve between January 1st and July 1st of each and every year.

History: En. Sec. 1, Ch. 62, L. 1917;
amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec.
3403, R. C. M. 1921; amd. Sec. 1, Ch. 53,
L. 1925.

References

Hughey v. Fergus County et al, 98 M
98, 37 P 2d 1035.

3404. Female breeding cattle, pure-bred bull to accompany. Any person or persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon said range or national forest reserve one pure-bred bull of a recognized beef type, not less than fifteen months nor more than eight years of age, for every thirty head of female breeding cattle, pastured upon such range or national forest reserve; provided, however, that any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed thirty head.

History: En. Sec. 2, Ch. 42, L. 1919; re-en. Sec. 3404, R. C. M. 1921.

3405. Penalty for violation of act. Any person or persons, firm, company, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and punishable by a fine of not less than twenty-five dollars nor more than two hundred fifty dollars.

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 3, Ch. 42, L. 1919; re-en. Sec. 3405, R. C. M. 1921.

3406. Taking up and castrating bulls, notice to owner. Any bull found running at large on the open range or national forest reserve in violation of the provisions of this act may be caught and castrated by any person finding such a bull; provided, any pure-bred dairy bull found running at

large may be taken up and party holding bull shall notify the owner in person, and if the owner of such bull does not take possession of said bull within twenty-four hours after being notified, party holding such bull may castrate him.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 4, Ch. 42, L. 1919; re-en. Sec. 3406, R. C. M. 1921.

CHAPTER 297

ROUNDUP AND SALE OF ABANDONED HORSES

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| Section | 3406.1. Definitions. |
| | 3406.2. Abandoned horses on public range declared public nuisance subject to condemnation—right of owner. |
| | 3406.3. Roundup of abandoned horses—petition—expenses. |
| | 3406.4. Notice of holding roundup—publication—form. |
| | 3406.5. Roundup foreman—duties—bond—sale or destruction of horses. |
| | 3406.6. Claim of owner. |
| | 3406.7. Proof of ownership—payment of taxes and penalties—decision of commissioners on claim. |
| | 3406.8. Notice of sale of abandoned horses—forms—time of sale—title. |
| | 3406.9. Assessment of horses taken in roundup. |
| | 3406.10. Disposal of proceeds—abandoned horse fund—use of fund. |
| | 3406.11. Report of roundup foreman—disposal of copies. |
| | 3406.12. Transfer of moneys of abandoned horse fund to general fund. |
| | 3406.13. Liability of officers and employees. |
| | 3406.14. Limitation of powers or duties of officers not to be construed from act. |
| | 3406.15. Effect of partial invalidity of act. |
| | 3406.16. Gathering horses in roundup district before roundup unlawful—rights of owner. |

3406.1. Definitions. The term “abandoned horse” as used in this act means any horse, mare, gelding, filly, jack, mule or any other animal of the genus equus, of the age of one (1) year or over, and unbranded, or if branded, which escaped assessment for taxation for the year next preceding its impounding as hereinafter provided for, and running at large upon the open range of this state, and including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded in the office of the recorder of marks and brands shall be deemed unbranded.

The term “open range” means all lands in the state of Montana not enclosed by a fence. The term “open range” includes all highways outside of private enclosures and used by the public, whether the same have been formally dedicated to the public or not.

The term “person” shall include individuals, associations or persons and corporations.

History: En. Sec. 1, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

Operation and Effect

One has no right to so use his property as to injure others and no vested right to the enjoyment of property if he fails to pay taxes thereon; hence this section, designed to rid the public range of abandoned horses, i.e., such as are unbranded or escaped taxation the previous year and as such declared a public nuisance, held not objectionable as retroactive legislation as interfering with the owner's vested right in the animals, the law affording him an

opportunity to protect his right if he sees fit to do so and in effect doing no more than providing a further means of enforcing his obligations not to use his property so as to injure others and to pay taxes on the animals. *Durocher v. Myers*, 84 M 225, 230, 274 P 1062.

Id. To afford protection to those in charge of a round-up of abandoned horses and their subsequent sale, the provisions of this section must be strictly followed, and if not and the sale is held before the hour of 8 o'clock in the forenoon it is illegal and constitutes a conversion of the animals.

3406.2. Abandoned horses on public range declared public nuisance subject to condemnation—right of owner. It shall be unlawful for any person to suffer or permit any abandoned horse to run at large upon the open range in the state of Montana; and such horses so running at large upon the open range in the state are hereby declared to be a public nuisance and a public menace, and are hereby condemned, subject to the right of the owner of any such abandoned horse to reclaim the same as and under the conditions hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.3. Roundup of abandoned horses—petition—expenses. For the purpose of speedily clearing abandoned horses from the open range in any county or in any district thereof, the board of county commissioners of any such county must, upon the petition of at least five (5) responsible property owners, inhabitants of the proposed roundup district, engaged in the livestock business and paying taxes upon livestock in such county, or upon the petition of a reputable local live stock association, authorize a roundup of abandoned horses in any district within such county, any such roundup to be conducted in such manner as to cause as little disturbance as reasonably possible to horses running lawfully on the open range. All expense of any such roundup shall be paid by the petitioners at whose request the same is initiated, and no county officer or board shall have any power to expend any moneys of the county or incur any obligation on its behalf in connection with any such roundup. Such petitioners, however, shall be reimbursed for the expense of such roundup, as and when moneys may be available for that purpose, in the abandoned horse fund, by warrants issued upon claims filed as in the case of other claims against the county. Upon the filing of such petition the board shall make an order authorizing such roundup, which order shall describe generally such district with reasonable certainty; provided, that said district shall not include more nor less territory than that described in the petition; and such order shall also specify the date on or within ten (10) days after which the roundup shall begin and shall designate the place within the district, at which the headquarters of such roundup shall be maintained.

History: En. Sec. 3, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.4. Notice of holding roundup—publication—form. Notice of the holding of any such roundup shall be given by the board of county commissioners at least thirty (30) days prior to the date when the same shall begin, such notices to be published at least once a week for three (3) successive weeks in some newspaper of general circulation, printed and published in the county in which such roundup is to be held, (if any such newspaper be printed and published within such county) and such notice shall be posted in at least five (5) public places, outside of the county seat of such county on public highways in such county or district, as the case may be, in which such roundup is to be held, and three (3) notices shall be posted in three (3) public places in such county seat, one of which notices shall be posted at the front door of the court house, such notices as posted outside of the county seat to be posted not less than two (2) miles apart and all posted notices to be posted at least twenty (20) days before the date upon or after

which the roundup shall begin as stated in such notice. If no newspaper be printed and published in such county, publication in a newspaper shall not be required. At least twenty (20) days before the date upon or after which the roundup is ordered to begin, a copy of such notice shall be, by the clerk of said board of county commissioners, filed with the Montana live stock commission. Such notices shall be in substantially the following form: "Notice is hereby given that in accordance with the provisions of chapter of the laws of the twentieth session of the legislative assembly of the state of Montana, and beginning on or within ten (10) days after theday of, 19....., a roundup of abandoned horses will be held under the supervision of the undersigned board of county commissioners in the county of....., state of Montana (or if only in a district, generally describing the district), and all abandoned horses taken up in such roundup, and not lawfully reclaimed by the owner, will be sold or otherwise disposed of as provided in said chapter. The headquarters of such roundup will be maintained at.....

Dated the..... day of, 19.....

By order of the board of county commissioners of..... county.

By:
Clerk of said board."

History: En. Sec. 4, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.5. Roundup foreman—duties—bond—sale or destruction of horses. All roundups shall be under the control and supervision of the board of county commissioners of the county in which the same shall be held. Roundup districts shall be numbered in the order of their creation. Each roundup shall be conducted by some person designated by the board of county commissioners, whose official designation shall be "roundup foreman, roundup district,, county, state of Montana," and such person shall maintain his headquarters at the place designated by the board of county commissioners in its order as the headquarters of such roundup. Such roundup foreman shall have power to administer oaths and affirmations in all matters coming within the scope of his official duties. The board of county commissioners shall require from such roundup foreman an official bond, in an amount not less than two thousand five hundred dollars (\$2,500.00) and not to exceed five thousand dollars (\$5000.00), which bond shall be conditioned as official bonds of county officers, and shall be subject to all provisions of law applicable to such bonds. All abandoned horses taken up in any such roundup shall be delivered to the roundup foreman in charge of such roundup and shall be by him offered for sale at public auction and sold to the highest bidder for cash, if there be any bidder or bidders therefor, and any such abandoned horses so offered for sale, and for which no bid is made, shall be destroyed or otherwise disposed of in the discretion of the board of county commissioners, unless reclaimed as herein provided.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.6. Claim of owner—cost of keeping and feeding horses. Any person claiming to be the owner of any such abandoned horse or horses may

serve written notice upon the roundup foreman in charge of such roundup of his claim of ownership, at any time before sale, or other final disposition of such horse or horses, such claim of ownership to be verified by the oath of the claimant or some one on his behalf, and the sale or other final disposition of such horse or horses shall, as to such horse or horses, be postponed from time to time as may be necessary, to enable the claimant to make proof of his claim as herein provided; provided that such postponement shall not be had unless the claimant shall pay to the roundup foreman in charge of such roundup, or deliver to him satisfactory security for, the estimated cost of keeping and feeding such horse or horses until sale or other final disposition, or delivery to the owner.

History: En. Sec. 6, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.7. Proof of ownership—payment of taxes and penalties—decision of commissioners on claim. Any person claiming any abandoned horse or horses as provided in section 3406.6 shall, within five (5) days after serving the notice provided for in said section 3406.6, or within such further time as the board of county commissioners shall allow, upon good cause shown, submit to such board proof of his ownership, and shall deposit with said board the amount of any unpaid taxes and penalties which may be assessed against such horse or horses, together with the sum of five dollars (\$5.00) roundup fee. The board shall decide all such cases in preference to all other matters coming before it and at the earliest possible moment. If the claim shall be allowed, the roundup foreman in charge of such roundup shall immediately be notified of such decision and he shall forthwith deliver such horse or horses, as to which ownership shall be so proved, to the owner upon payment of any amount due from such owner for the estimated cost of keeping and feeding such horse or horses as aforesaid, and the deposit made by such owner of taxes, penalties, and roundup fee, shall be by the board delivered to the county treasurer; but if such board shall deny the claim of ownership it shall forthwith notify the person in charge of such roundup of its decision, and such horse or horses as to which such claim shall be denied shall be offered for sale at the earliest convenient session of the sales being held under such roundup, and if not sold the same shall be destroyed or otherwise disposed of as though no claim had been presented.

History: En. Sec. 7, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.8. Notice of sale of abandoned horses—form—time of sale—title. Before any sale shall be had, at least ten (10) days notice shall be given by publication and posting in the manner specified in section 3406.4, except that publication, if made in a newspaper, shall be once in each week for two successive weeks, and posting shall be done at least five (5) days before the date of sale. Such notice shall be in substantially the following form:

NOTICE OF SALE OF ABANDONED HORSES

Notice is hereby given that on day, the day of, 19...., at in the county of, state of Montana, beginning at the hours of M., on said day the following described abandoned horses will be sold at public auction to the highest bidder for cash, to wit:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law, and for which no bid is made at said sale, will be destroyed, or otherwise disposed of, in the discretion of the board of county commissioners of _____ county, state of Montana.

Dated the _____ day of _____, 19_____.

By order of the board of county commissioners of _____ county, Montana.

By _____ clerk of said board.

All such sales shall be held between the hours of eight (8) o'clock in the forenoon and six (6) o'clock in the afternoon and may be continued from time to time until all abandoned horses taken in such roundup shall have been disposed of. On payment of the price bid for any such horse or horses sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: En. Sec. 8, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

Operation and Effect

To afford protection to those in charge of a roundup of abandoned horses and their subsequent sale, the provisions of

this section must be strictly followed, and if not and the sale is held before the hour of 8 o'clock in the forenoon it is illegal and constitutes a conversion of the animals. *Durocher v. Myers*, 84 M 225, 230, 274 P 1062.

3406.9. Assessment of horses taken in roundup. It shall be the duty of the county assessor immediately to assess all horses taken up in such roundup which shall be sold, or reclaimed before sale, and not already assessed for the current year, and forthwith transmit to the county treasurer a copy of each assessment made. Any such horses which have escaped the assessment mentioned in section 3406.1, shall be assessed as provided for in section 2033.

History: En. Sec. 9, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.10. Disposal of proceeds—abandoned horse fund—use of fund. All moneys paid by reclaiming owners of any such horse or horses shall be paid to the county treasurer and by him kept in a fund to be designated as the "abandoned horse fund, roundup district No. _____ (giving number of district in which such horse or horses were rounded up.)" A separate fund, styled as above specified, shall be kept by the county treasurer for each roundup district created in his county. All moneys received from the sale of any such horses shall be paid to the county treasurer and if such sum received from the sale of any such horse shall not exceed the taxes, penalties, and the roundup fee, the whole thereof shall be immediately deposited in the abandoned horse fund for the district in which such horse or horses were rounded up; but if the sum received from the sale of any such horse shall exceed such taxes, penalties and roundup fee, the amount of such taxes, penalties and roundup fee shall be forthwith deposited in the abandoned horse fund for such district, and the excess shall be kept by the treasurer in a separate fund, and he shall make a record of the description of such horse, the amount received for the same, and the amount of deductions for taxes, penalties and roundup fee, which record shall be open to

public inspection; and any person making claim to the board of county commissioners at any time within six (6) months from the date of sale, of ownership of such horse, and submitting proof of ownership to such board with such claim, to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse in excess of taxes, penalties, and roundup fee, which shall not be so claimed within six (6) months after such sale, shall at the expiration of said period become the property of such county and shall be transferred to the abandoned horse fund for the district in which any such horse was rounded up.

History: En. Sec. 10, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

Operation and Effect

The owner of abandoned range horses seeking to recover funds in the county treasury realized from their sale, can under this section, only claim the balance in the county treasury over and above the charges against the horse for taxes, penalties and roundup fees; therefore where

there was no balance to be claimed, the owner's property rights were not affected by failure of the round-up foreman to make the report required by the next section within the proper time and his contention that the two sections construed together, are unconstitutional if not construed in a certain way may not be considered. *Durocher v. Myers*, 84 M 225, 230, 274 P 1062.

3406.11. Report of roundup foreman—disposal of copies. The roundup foreman in charge of any such roundup shall keep an accurate record of all proceedings had under the order for such roundup and within thirty (30) days after such roundup shall be completed he must prepare, in triplicate, and verify by his oath, a full, true and accurate report of all the proceedings taken or had under the order for the roundup, among other things, particularly including a complete financial statement, the number and description of horses impounded and how disposed of. Within said thirty (30) days one of such triplicates of such report shall be filed with the clerk of the board of county commissioners and such filing shall be notice to the world of all the contents of such report and prima facie proof of the facts herein stated. Within said thirty (30) days one of such triplicate shall also be filed with the county assessor and one with the county treasurer for their information and appropriate action.

History: En. Sec. 11, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

Operation and Effect

The owner of abandoned range horses seeking to recover funds in the county treasury realized from their sale, can under the preceding section, only claim the balance in the county treasury over and above the charges against the horses for taxes, penalties and round-up fees;

therefore where there was no balance to be claimed, the owner's property rights were not affected by failure of the round-up foreman to make the report required by this section within the proper time and his contention that the two sections construed together, are unconstitutional if not construed in a certain way may not be considered. *Durocher v. Myers*, 84 M 225, 230, 274 P 1062.

3406.12. Transfer of moneys of abandoned horse fund to general fund. On the 30th day of November of each year the county treasurer shall, if all claims against any such abandoned horse fund are paid and a balance remains in such fund, transfer all moneys so remaining in such fund to the general fund of the county, subject to the usual division with the state as to any portion of such balance which shall consist of taxes collected on the abandoned horses; but no part of the roundup fee of five dollars (\$5.00) shall be paid to the state; and any portion of the taxes so collected which

shall be used in paying claims against said fund is hereby declared to be a part of the cost of collection of such taxes.

History: En. Sec. 12, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.13. Liability of officers and employees. No officer, board, or employee of any county, nor any employee of any such officer or board shall be liable for any act performed in good faith in discharging official duties under this act; and all such acts shall be presumed to have been in good faith and in conformity with this act.

History: En. Sec. 13, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.14. Limitation of powers or duties of officers not to be construed from act. Except as herein provided, nothing herein contained shall be construed as limiting the powers or duties of assessors, county treasurers, or other boards or officers.

History: En. Sec. 14, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.15. Effect of partial invalidity of act. If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part hereof directly adjudged to be invalid or inoperative.

History: En. Sec. 15, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927.

3406.16. Gathering horses in roundup district before roundup unlawful—rights of owner. It shall be unlawful for any person or persons to round up from the range any horse or horses in any roundup district, after such districts have been designated by the county commissioners, until after such roundup; provided, however, that an owner of horses on which the taxes have been paid in this district may gather the same by notifying the roundup foreman, and being accompanied by such foreman or a representative of such foreman in gathering such horses.

History: En. Sec. 1, Ch. 29, L. 1927.

3407-3413. Repealed—Chapter 73, laws of 1923.

CHAPTER 298

BOUNTIES FOR KILLING WILD ANIMALS—KILLING DOGS INJURING OR DESTROYING LIVESTOCK

Section 3414.	State bounty fund—creation.
3417.1.	Meaning of term "wild animal."
3417.2.	Livestock commission to supervise destruction of wild animals—cooperation with federal and other agencies.
3417.3.	Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
3417.4.	Bounties on wolves, coyotes, mountain lions.
3417.5.	Evidence of killing by bounty claimant.
3417.6.	Bounty inspectors—form of claim—affidavits required—penalty for falsification—records.
3417.7.	Bounty claims and certificates to be filed with livestock commission.
3417.8.	Livestock commission to examine claims and certificates—approval or disapproval of claims.
3417.9.	Delivery of claims and certificates to board of examiners.
3417.10.	Indorsement of claims by board of examiners—warrants.

- 3417.11. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 3417.12. Falsifying certificates or affidavits constitutes perjury—penalty.
- 3417.13. Bounty fund—levy of tax for—limitation of levy—use of fund.
- 3417.14. Penalty for fraudulent claims.
- 3417.15. Killing of dogs destroying or injuring stock—notice to owner.
- 3417.16. Liability of owner for damages by dog.

3414. State bounty fund—creation. For the purpose of providing for the payment of bounty claims there is hereby created a fund to be known as the state bounty fund which shall consist of five per cent. of all license money collected by the several county treasurers of the state and said money shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the state bounty fund.

History: En. Sec. 3075 Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921.

References

Cited or applied as section 3075, political code, in *State v. Camp Sing*, 18 M 128, 129, 44 P 516.

3415-3417. Repealed—Chapter 73, laws of 1923.

3417.1. Meaning of term “wild animal.” For the purpose of this act the term “wild animal” shall include wolf, wolverine, coyote, mountain lion, lynx, bobcat, and any other animal causing depredations upon live-stock.

History: En. Sec. 1, Ch. 73, L. 1923.

3417.2. Livestock commission to supervise destruction of wild animals—cooperation with federal and other agencies. The destruction of wild animals shall be conducted under the supervision of the livestock commission, which shall make rules and regulations respecting the same and arrange for the carrying out of the provisions of this act, and said commission is hereby authorized to co-operate with the authorized representatives of the United States biological survey for the systematic destruction of said wild animals by hunting, trapping and poisoning operations. Further to increase the destruction of wild animals, the livestock commission may also enter into co-operative agreement with state departments, counties, associations, corporations and individuals.

History: En. Sec. 2, Ch. 73, L. 1923.

3417.3. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of the fund herein created, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the bounty fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923.

3417.4. Bounties on wolves, coyotes, mountain lions. There shall be paid from the bounty funds of the state for the killing of wild animals inimical to the stock industry or to game, the following bounties, where such animals are killed between April first and July first inclusive: for

said county of....., was taken; that such an animal was killed within the bounds of the county of..... within the thirty days last past, and that the same or the greater number of them were killed nearer to the residence of said sheriff or deputy sheriff than to the residence of any other sheriff; that his claim is made for bounty pursuant to law for.....(.....) and(.....) actually killed or caused to be killed by affiant aforesaid; and that all blanks in this affidavit have been filled out by the affiant in his own handwriting, or that because of affiant's inability to write, such blanks were filled out by....., a person other than the sheriff or deputy sheriff, at the request of said affiant; and that such person so acting for affiant, in filling out the blanks has signed his name hereto at the affiant's request, below the name of the affiant, for the purpose of identification of this affidavit, as by law required.

Subscribed and sworn to before me this day of
....., 192.....

..... sheriff, county,
..... Montana. And shall require affidavits from two resident taxpayers residing in the vicinity in which such animal or animals were killed, setting forth that they are resident taxpayers on livestock, giving their postoffice addresses and stating that they are personally acquainted with the person presenting the skin or skins, and to their knowledge, information, and belief, said person did kill or cause to be killed the animal or animals from which the skin or skins were taken within thirty days preceding the offering of such skin for a bounty to the sheriff, under-sheriff, or deputy sheriff to which the same is presented; and he shall at the same time make out and deliver to said person a certificate addressed to the county clerk of his county, and immediately deliver to said county clerk a duplicate thereof, showing the date, number, and kind of skins so marked for severing, and the name of the person presenting the same; also the fact of the filing of the affidavits of taxpayers heretofore required and the examination made as required, and said certificate shall be duly signed by him in his official capacity; provided, that when any doubt shall exist as to the kind of skin or skins presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty; and each sheriff shall keep a record in a bound book of all the skins so marked and severed, showing the date, number, and kinds and the names of the persons presenting the same, which book shall be a book of official record. Neither the sheriff, under-sheriff, nor deputy sheriff shall perform any duties under the provisions of this act except at the county seat.

Wilfully making a false certificate or affidavit in any material portion thereof by any taxpayer as herein provided shall be a felony, punishable the same as a crime of perjury. The sheriff shall, not later than the fifteenth of each month, render to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins so presented, as to

each and every certificate which he has issued during said month. The county clerk shall, upon the receipt of each said certificate, file the same in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in such certificate; and upon the receipt of said skin or skins he shall call to his assistance either the county treasurer or in his absence, the clerk of the district court, who, being present, shall both, in order to prevent fraud, minutely examine each scalp; and should such examination disclose that the scalps, as heretofore specified, of such animal or animals, agree with the number and kind of scalps or lower jaw of mountain lion mentioned in the said certificate, the county clerk shall thereupon, in the presence of said treasurer or clerk of the district court, destroy said scalps, by fire; and said county clerk shall then make out and deliver to the person named in said certificate a second certificate showing the statement of the facts as contained in the certificate to the sheriff, under-sheriff, or deputy sheriff, with the additional statement of the examination so made by him, and that he found said scalps to agree with the number and kind mentioned in the certificate of said sheriff, under-sheriff, or deputy sheriff, and so stated there in said certificate. In no case should a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him; and the county clerk shall receive for each scalp, or mountain lion lower jaw, accounted for by him, the sum of five cents, to be paid quarterly by the state treasurer out of the bounty fund. The county clerk shall keep a record, in a bound book of all certificates so received and issued, showing the date and description of the number and kind of hides, and the names of the persons presenting the same, which book shall be an official record. County clerks are required to send a report and statement to the live stock commission on or before the twentieth of each month.

History: En. Sec. 3, Ch. 109, L. 1925.

3417.7. Bounty claims and certificates to be filed with livestock commission. All bounty claims and certificates issued by the county clerks and recorders of the several counties of this state under the provisions of section 3417.6 shall be filed in the office of the livestock commission and registered in a book provided for that purpose.

History: En. Sec. 4, Ch. 109, L. 1925.

3417.8. Livestock commission to examine claims and certificates—approval or disapproval of claims. It shall be the duty of the livestock commission to examine into and investigate every such bounty claim and certificate filed with such commission, and in making such examination and investigation, the commission may require the holder of any such certificate or claim to furnish the commission with such additional evidence or proof with reference thereto as the commission may deem necessary and proper, and such evidence may be either oral or documentary as required by the commission. The livestock commission shall, after making such examination and investigation, indorse on such certificate or claim its approval or disapproval thereof, and if the same or any part thereof be disapproved, such indorsement shall state the reasons for such disapproval. If any such certificate or claim be disapproved by the commission, either in whole or in

part, the commission shall immediately notify the holder thereof of the action of the commission and of the reasons therefor, and the date when said certificate or claim will be presented to the state board of examiners for its action thereon.

History: En. Sec. 5, Ch. 109, L. 1925.

3417.9. Delivery of claims and certificates to board of examiners. The livestock commission shall, after such examination and investigation has been completed and the proper indorsement has been made on such certificate or claim, deliver the same to the state board of examiners for allowance or disallowance.

History: En. Sec. 6, Ch. 109, L. 1925.

3417.10. Indorsement of claims by board of examiners—warrants. If the state board of examiners approve and allow any such certificate or claim, they must indorse thereon over their signatures, "Approved for the sum of _____ dollars" and transmit the same to the office of the state auditor, and the auditor must draw his warrant on the state bounty fund for the amount so approved or allowed, in favor of the claimant, or his assigns, in the order in which the same is approved.

History: En. Sec. 7, Ch. 109, L. 1925.

3417.11. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. If, at the end of any bounty paying season, there shall be a surplus in the state bounty fund, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of the fund herein created, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the bounty fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925.

3417.12. Falsifying certificates or affidavits constitutes perjury—penalty. Any person who shall falsely make, alter, forge, or counterfeit any of said certificates or orders shall be deemed guilty of forgery, and any person who shall falsely swear to any affidavit provided for by this act, or procure the same to be done by another, with the intent of obtaining any one of said certificates or orders, shall be deemed guilty of perjury, and any person convicted of any of the offenses declared in this section shall be punished by imprisonment in the state's prison for a term of not less than one year nor more than ten years.

History: En. Sec. 9, Ch. 109, L. 1925.

3417.13. Bounty fund—levy of tax for—limitation on levy—use of fund. There is hereby created a fund, to be known as the "bounty fund." The tax commission, or the department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of pay-

ing for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the bounty fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, duly and regularly presented to the state board of examiners, in accordance with the law governing the payment of claims allowed by said board, and all moneys in said fund are hereby appropriated for such purposes.

History: En. Sec. 10, Ch. 109, L. 1925.

3417.14. Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine, and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be converted into the state bounty fund.

History: En. Sec. 11, Ch. 109, L. 1925.

3417.15. Killing of dogs destroying or injuring stock—notice to owner. Any dog, whether licensed or not, which, while off the premises owned or under control of its owner, shall kill, wound or injure any livestock not belonging to the master of such dog, shall be deemed to be a public nuisance and may be killed forthwith by any person, or the owner, when notified, shall kill such dog within twenty-four (24) hours and if he fails to do so an officer may be notified and shall kill or cause to be killed such dog; provided, that nothing contained herein shall apply to any dog acting under the direction of its master, or the agents or employees of such master.

History: En. Sec. 1, Ch. 142, L. 1933.

3417.16. Liability of owner for damages by dog. When it has been proven that a dog has killed, wounded, or injured any livestock, the owner of such dog shall be civilly liable to the owner of such livestock, in a civil suit for damages in a sum equal to the amount of the damages incurred.

History: En. Sec. 2, Ch. 142, L. 1933.

CHAPTER 299

REGULATION OF QUARTZ MINING INDUSTRY

- Section 3418. Inspectors of quartz mines—appointment, term, and compensation.
 3419. Duties of mine inspector—annual inspection.
 3420. Duty to inspect mine upon complaint.
 3421. Notice to owner of defects.
 3422. Annual inspection—report.
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 3425. To what mines act is applicable.
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 3427. Safety apparatus must be used in mines.
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 3432. Ventilation of quartz mines—duty of operator to furnish.
 3433. Toilet places in mines—underground stables.
 3434. Protections and guard rails in case of shafts and underground openings.
 3435. Violation of act a misdemeanor.

3418. Inspectors of quartz mines—appointment, term, and compensation.

The industrial accident board shall appoint not to exceed two inspectors of quartz mines and shall prescribe their term of office and fix their compensation.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R. C. M. 1921.

3419. Duties of mine inspector—annual inspection.

It is the duty of the inspectors of quartz mines to visit every mine in the state once every year and inspect its workings, timbering, ventilation, means of ingress and egress, and the means adopted and in use for the preservation of the lives and safety of the miners employed therein. For this purpose the inspectors at all times shall have access to any mine and all parts thereof. All mine owners, lessees, operators, or superintendents must render such assistance as may be necessary to enable the inspectors to make the examination. When upon such inspection any mine or portion thereof is found to be in an unsafe condition, the inspector shall at once serve a notice in writing upon the owner, lessor, lessee, agent, manager, or superintendent thereof, setting forth the nature of the defects which render such mine unsafe, and the point or place in such mine where such defects exist, and requiring the repairs necessary to remedy such defects to be made within a specified time, and if in his judgment the circumstances so require, he shall forbid the operation of such mine or portion thereof as has been declared unsafe, save and except for the purpose of making the repairs necessary for the purpose of remedying such defects and making such mine safe for the laborers employed therein.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R. C. M. 1921.

NOTE.—In this and succeeding sections the words “inspector of mines” have been changed to “inspectors of quartz mines” to conform to later enactments.

3420. Duty to inspect mine upon complaint. Whenever an inspector of mines receives a complaint in writing signed by one or more parties, setting forth that the mine in which he or they are working is dangerous in any respect, he must in person visit and examine such mine. Every

complaint must set forth the nature of the danger existing at the mine, and the time the cause of such danger was first observed.

History: En. Sec. 2, Ch. 98, L. 1903; re-en. Sec. 1714, Rev. C. 1907; re-en. Sec. 3420, R. C. M. 1921.

3421. Notice to owner of defects. After such complaint has been received by an inspector of mines, he must, as soon as possible, visit such mine; and if from such examination he ascertains that the mine is from any cause in a dangerous condition, he must at once notify the owner, lessor, or agent thereof, such notice to be in writing, and to be served by copy on such owner, lessor, lessee, or agent, in the same manner as provided by law for the serving of legal process, and the notice must state fully and in detail in what particular manner such mine is dangerous or insecure, and require all necessary changes to be made without delay, for the purpose of making such mine safe for the laborers employed therein; and in any criminal or civil procedure at law against the party or parties so notified, on account of loss of life or bodily injury sustained by an employee subsequent to such notice and in consequence of a neglect to obey the inspectors' requirements, a certified copy of the notice served by the inspector is prima-facie evidence of the gross negligence of the party or parties so complained of. If the owner, lessor, lessee, or agent of any such mine shall neglect or refuse to obey or comply with the instructions of the inspector as contained in such notice, or shall neglect or refuse to cause the repairs necessary to remedy such defect to be made within a reasonable time, or shall refuse to cause work to be stopped when so ordered, such party or parties so refusing may be prosecuted criminally by the inspector.

History: En. Sec. 3, Ch. 98, L. 1903; re-en. Sec. 1715, Rev. C. 1907; re-en. Sec. 3421, R. C. M. 1921.

3422. Annual inspection—report. It is the duty of the inspectors of mines, at least once in each year, to visit each mining county in the state, and examine as many of the mines in the different counties as practicable, and make such recommendations as in their judgment are necessary to insure the safety of the workmen employed therein; and whenever, from his examination an inspector finds any mine to be in an unsafe condition, he shall at once serve a notice upon the owner, lessor, lessee, or agent thereof; and if any such owner, lessor, lessee, or agent fails to comply with such notice, he may prosecute them or any of them as provided in the next preceding section.

History: En. Sec. 4, Ch. 98, L. 1903; re-en. Sec. 1716, Rev. C. 1907; re-en. Sec. 3422, R. C. M. 1921.

3423. Investigation after accidents. Whenever a serious or fatal accident occurs in any mine, it is the duty of the person in charge thereof to immediately notify the industrial accident board, and upon receiving such notice an inspector must at once repair to the place of the accident and investigate fully the cause of such accident, and whenever possible to do so, the inspector shall be present at the coroner's inquest held over the remains of the person or persons killed by such accident and testify as to the cause thereof and state whether, in his opinion, the accident was due

to the negligence or mismanagement of the owner or person in charge. If the inspector cannot be immediately present in case of a fatal or serious accident occurring, it is the duty of the owner or person in charge of the mine to have written statements made by those witnessing the same, and duly sworn to. In case no person was present at the time of the accident, then the verified statement of those first present after the accident must be taken, and such statement must be given to the inspector. If after making such investigation the inspector deems the facts warrant it, he may prosecute criminally the owner, lessor, lessee, or agent of the mine in which such accident occurred.

History: En. Sec. 5, Ch. 98, L. 1903; re-en. Sec. 1717, Rev. C. 1907; re-en. Sec. 3423, R. C. M. 1921.

3424. Report. The industrial accident board must make an annual report to the governor on the first Monday of November, and in the report must state all the accidents that have occurred in the mines of the state which have occasioned serious injury or resulted fatally, together with the nature and cause of such accidents. Such report must also contain statistical and other information which may tend to promote the development of the mineral resources of the state, and must set forth the result of the inspector's labors.

History: En. Sec. 588, Pol. C. 1895; re-en. Sec. 1719, Rev. C. 1907; re-en. Sec. 3424, R. C. M. 1921.

3425. To what mines act is applicable. The provisions of sections 3419 to 3431 of this chapter do not apply to mines in which less than five men are employed. But all owners, lessors, lessees, agents, or managers operating any metalliferous mine in this state in which five or more men are employed shall report the same to the inspector of mines, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, postoffice address, and number of men employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R. C. M. 1921.

3426. Penalties. All violations of the provisions of sections 3419 to 3431 of this chapter are provided for in section 11280 of the penal code.

History: En. Sec. 590, Pol. C. 1895; re-en. Sec. 1721, Rev. C. 1907; re-en. Sec. 3426, R. C. M. 1921.

3427. Safety apparatus must be used in mines. It is unlawful for any person to sink or work through any vertical shaft, where mining cages are used, at a greater depth than two hundred feet, unless the shaft is provided with an iron bonneted safety-cage to be used in lowering and hoisting employees or any other persons. The safety apparatus, whether consisting of eccentrics, springs, or other device, must be securely fastened to the cage, and of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet-iron of good quality, at least three-sixteenths of an inch in thickness, and must cover the top of the cage in such manner as to afford the greatest protection to life and limb, from any debris or anything falling down the shaft.

History: En. Sec. 3650, Pol. C. 1895; re-en. Sec. 1722, Rev. C. 1907; re-en. Sec. 3427, R. C. M. 1921.

3428. Penalties. The penalty for violating any of the provisions of the preceding section is provided in section 11268 of the penal code.

History: En. Sec. 3651, Pol. C. 1895; re-en. Sec. 1723, Rev. C. 1907; re-en. Sec. 3428, R. C. M. 1921.

3429. Code of signals in mines. It is made the duty of the inspector of mines of Montana, and he is hereby required to prepare a complete code of signals for use in all mines in this state, worked through a shaft of seventy-five feet or more in depth, and employing ten or more men, and cause the same to be made known to each owner or operator of a mine in Montana by printed circular instructions, to the end that a uniform code of mine signals may prevail. The said inspector of mines of Montana may add to or change such code of signals as circumstances may require, but no change of signals shall go into effect until a time specified by him, not less than sixty days nor more than ninety days from the time such change shall be ordered by him; provided, that the code of signals first prepared by him shall be used in all said shaft mines from and after June 1, 1895.

History: En. Sec. 3652, Pol. C. 1895; re-en. Sec. 1724, Rev. C. 1907; re-en. Sec. 3429, R. C. M. 1921.

References

Cited or applied as section 1724, revised codes, in *Daniels v. Granite Bi-Metallie Con. Mining Co.*, 56 M 284, 184 P 836.

3430. Penalties. Any owner or operator of a mine who shall refuse or neglect to cause the signals provided for in the preceding section to be used in his mine, to the exclusion of all other signals, shall be deemed guilty of a misdemeanor, and upon conviction of such refusal or neglect shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days or more than ninety days, in the discretion of the court, for each and every offense.

History: En. Sec. 3653, Pol. C. 1895; re-en. Sec. 1725, Rev. C. 1907; re-en. Sec. 3430, R. C. M. 1921.

3431. Fines paid into school fund. All fines which may be collected under the provisions of this act shall be paid into and form a portion of the public school fund in the county in which conviction takes place.

History: En. Sec. 3634, Pol. C. 1895; re-en. Sec. 1726, Rev. C. 1907; re-en. Sec. 3431, R. C. M. 1921.

3432. Ventilation of quartz mines—duty of operator to furnish. It shall be the duty of all mining operators of any and all quartz mines in this state, when working to a greater depth than three hundred feet, or any general manager, superintendent, or foreman acting on behalf of the above, whether said mining property is operated by tunnel, shaft, or other opening, to provide where necessary, feasible, and practicable, a suitable and practical method for ventilating said mine, either by separate shaft or other mine working of suitable size or capacity, which said ventilating system shall provide for the delivery of air to all portions of said mine that are being operated, and also provide reasonable means for carrying away of noxious fumes, gas, or smoke.

History: En. Sec. 1, Ch. 72, L. 1911; re-en. Sec. 3432, R. C. M. 1921.

3433. Toilet places in mines—underground stables. It shall be the duty of all mining operators to provide suitable and practicable toilet arrangements, or places which may be used for toilet purposes, for the use of employees in mines. Such toilets or sanitary arrangements may consist of a properly constructed toilet-car or receptacle, where it is practicable and feasible to use the same, that may be taken into the different working levels of a mine, and when such cars or receptacles are used they shall be sent to the surface each day for proper cleaning or disinfecting. Where proper toilet apparatus is not provided, the employee shall be allowed to go to the surface or other suitable place, which place shall be kept in a reasonably sanitary condition. Underground stables shall be cleaned and droppings in waste taken to the surface each day. This section applies to mines working thirty men or over.

History: En. Sec. 2, Ch. 72, L. 1911; re-en. Sec. 3433, R. C. M. 1921.

3434. Protections and guard-rails in case of shafts and underground openings. Underground workings consisting of chutes, manways, and winzes, or any opening kept for ventilating purposes, or for the removal of ore or waste material, shall when necessary be protected by guard-rails, or by a suitable cover known as a grizzly, made of good, substantial timbers or metal bars. Shafts at stations shall be protected by guard-rails at every level. In vertical manways used by employees exclusively for traveling purposes, in addition to proper ladders there shall be suitable landings, placed not to exceed thirty feet apart, and so far as feasible and practicable all such manways or air-courses used as an escape for men must be kept free from all obstructions.

History: En. Sec. 3, Ch. 72, L. 1911; re-en. Sec. 3434, R. C. M. 1921.

3435. Violation of act a misdemeanor. Every mining operator, whether person or corporation, failing to comply with any of the provisions of this act, or any general manager, superintendent, or foreman acting on behalf of such mining operator, and failing to comply with any of the provisions of this act, shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R. C. M. 1921.

CHAPTER 300

SAMPLING AND ASSAYING ORE

- Section 3436. Purchasers and samplers of ore to maintain sample-room.
 3437. Samples of fifty pounds per ton to be retained until settlement.
 3438. Penalty for commingling foreign substances with ore.
 3439. Umpire assayers—appointment, qualifications and duties.
 3440. Notice of selection.
 3441. Violation of act a misdemeanor—penalty.

3436. Purchasers and samplers of ore to maintain sample-room. Any person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal, shall maintain a sampling-room or house to which the ore shippers, their agents, or representatives, shall have access at all times during the sampling of ores, or while the same is being carried on, and in which shall be samples of all ores he or they may buy or smelt.

History: En. Sec. 1, Ch. 54, L. 1909; re-en. Sec. 3436, R. C. M. 1921.

3437. Samples of fifty pounds per ton to be retained until settlement. Every such person, association, or corporation which shall buy any ores upon any agreement to pay for the same in amount dependent upon the metallic contents of the same, or smelt any ore, shall retain from the pulp or crushed ore, as the same is sampled, an amount selected regularly and at equal intervals from any lot of ore so brought or to be smelted, a quantity not less than fifty pounds out of each ton of such ore, and shall keep the same separate and apart from any other ores or pulp for a period of thirty days, or until full settlement is made and accepted by the shipper; and until such settlement is made and accepted, the ore shipper, his agents, or representatives, shall be entitled to take from the quantity so retained any part thereof for the purpose of sampling or assaying the same; provided, that the value of any part so taken by such owner or shipper may be deducted from the total value of the ore delivered by him.

History: En. Sec. 2, Ch. 54, L. 1909; re-en. Sec. 3437, R. C. M. 1921.

3438. Penalty for commingling foreign substances with ore. Any person, or persons, corporation, association or copartnership who shall, with intent to defraud, in any manner introduce any foreign substance into any ore, or commingle any foreign substance with any ore intended for sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt; or into any sample retained for tests or assays, as in the next preceding section provided, in any manner whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than sixty days nor more than twelve months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 54, L. 1909; amd. Sec. 1, Ch. 44, L. 1921; re-en. Sec. 3438, R. C. M. 1921.

3439. Umpire assayers—appointment, qualifications and duties. Any person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt the same, whether for themselves or as the agent or agents for other purchasers, shall, on or before the tenth day of April, 1909, choose an assayer or assayers who, for at least one year prior to the passage of this act, shall have operated an assay office or chemical laboratory within this state, and to such selected assayer or assayers shall be submitted all samples of ore, sampled by such person, association, or corporation, over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of such ore. Said chosen assayer or assayers shall be known as the umpire or umpires for such person, association, or corporation.

History: En. Sec. 1, Ch. 115, L. 1909; re-en. Sec. 3439, R. C. M. 1921.

3440. Notice of selection. Upon the selection of such assayer or assayers, who shall be actively engaged in the assaying business in this state, every person, association, or corporation selecting the same shall, within ten days after such choice is made, post a notice of such choice, in which shall appear the name of the assayer or assayers so selected, in a conspicu-

ous place with and without the room or house where the sampling of ores is carried on by such person, association, or corporation.

History: En. Sec. 2, Ch. 115, L. 1909; re-en. Sec. 3440, R. C. M. 1921.

3441. Violation of act a misdemeanor—penalty. Every person, association, or corporation engaged in the sampling of ores belonging to others, who fails to comply with the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars nor less than five hundred dollars.

History: En. Sec. 3, Ch. 115, L. 1909; re-en. Sec. 3441, R. C. M. 1921.

CHAPTER 301

PAYMENT FOR CONSIGNMENTS OF ORE—PURCHASERS FROM LEASED MINES

- Section 3442. Time for settlement of ores purchased by smelters, etc.
3443. Violation of act a misdemeanor—penalty.
3444. Purchasers of ore from leased mines to furnish statement.
3445. Shipper—penalty for violation.
3446. Smelters—penalty for violation.

3442. Time for settlement for ores purchased by smelters, etc. Every person, association, company, or corporation, engaged within this state in purchasing ores, minerals, or metals from, or in smelting, milling, or otherwise reducing or preparing the same for market for any other person, or persons, association, company, or corporation, shall, within twenty days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor, or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction. Every such person, association, company, or corporation, to whom or to which any such ores, minerals, or metals have heretofore been shipped and delivered, and for which settlement and payments have not been made or had, shall, within twenty days after this act takes effect, make full settlements and payments therefor to, and with the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction.

History: En. Sec. 1, Ch. 37, L. 1911; re-en. Sec. 3442, R. C. M. 1921.

3443. Violation of act a misdemeanor—penalty. Any person, association, company, or corporation, violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars, nor less than five hundred dollars.

History: En. Sec. 2, Ch. 37, L. 1911; re-en. Sec. 3443, R. C. M. 1921.

3444. Purchasers of ore from leased mines to furnish statement. All persons or corporations buying or treating ores from leased mines or mining claims, shall furnish both to the lessor and lessee, or lessors and lessees, of such mines or mining claims, a true and correct copy of the statement of returns of ores from such sale or shipment, such statement to show both the gross and net proceeds derived from such sale or shipment of ores.

Upon shipment of any such ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating same the name, or names, and postoffice address of the lessor or lessors, lessee or lessees, interested in such shipment of ores, and within seven days after receipt of such statement from such sampling works or smelter the said shipper shall make settlement with such lessor or lessors, lessee or lessees, for such shipment or sale of ores, based upon such said statement received by the parties from such sampling works or smelter.

History: En. Sec. 1, Ch. 79, L. 1921; re-en. Sec. 3444, R. C. M. 1921.

3445. Shipper—penalty for violation. Any person or corporation who, as such shipper, shall violate the provisions of the preceding section shall be liable to the lessor or lessors, lessee or lessees, for ten per cent. of the net returns from such shipment, or sale, of ores referred to in said section, in addition to the value of the interest of the lessor or lessors, lessee or lessees in said shipment, the same to be recovered in an action in any court of competent jurisdiction.

History: En. Sec. 2, Ch. 79, L. 1921; re-en. Sec. 3445, R. C. M. 1921.

3446. Smelters—penalty for violation. Any person or corporation operating any sampling works, or smelter, within this state who shall violate any of the provisions of section 3444 of this code shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than fifty dollars nor more than one hundred dollars.

History: En. Sec. 3, Ch. 79, L. 1921; re-en. Sec. 3446, R. C. M. 1921.

CHAPTER 302

REGULATION OF COAL-MINING INDUSTRY

- Section 3447. Title of act.
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3544. Operators must make reply to statistical inquiry.
3545. Penalties.
3546. Definitions.

3447. Title of act. This act shall be known as the coal-mining code of the state of Montana.

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R. C. M. 1921.

NOTE.—Throughout the entire act the necessary changes have been made to conform to subsequent legislation placing the office of coal-mine inspector under the control of the industrial accident board.

Operation and Effect

The common-law rule that the master must exercise ordinary care and diligence to provide his employees with a reasonably safe place in which to work, though not applying when they and their fellow-servants are creating the place to work, when it is constantly being changed in

character by their work, or when it only becomes dangerous by their carelessness or negligence, does obtain where the place is a completed one, such as that part of a mine tunnel behind the miner driving it, and is applicable to coal mines as well as to any other place of employment. *Kallio v. Northwestern Improvement Co.*, 47 M 314, 321, 132 P 419.

Id. The provisions of this and following sections, the purpose of which is to reduce as far as possible the hazards incident to coal mining, cannot be nullified by any agreement between employer and employee, or any rule or custom in derogation of the duties imposed.

3448. Coal-mine inspector—appointment, compensation and term. The industrial accident board shall appoint a coal-mine inspector and shall fix his compensation and term of office.

History: En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R. C. M. 1921.

3449. Qualifications of inspector. No person shall be eligible to the office of state coal-mine inspector until he shall have attained the age of thirty years. He shall be a citizen of the United States, a qualified resident of the state of Montana, shall have been actually employed at coal mining ten years prior to his appointment, and shall possess a competent knowledge of all the different systems of coal mining and working and properly ventilating coal mines, and the nature and constituent parts of noxious and explosive gases of coal mines, and of the various ways of expelling the same from the said mines. He shall have passed a successful examination by the board of examiners, and his certificate of qualification shall have been filed with the governor by the said board of examiners, as provided by law.

History: En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R. C. M. 1921.

3450. Powers and duties of inspector. The state coal-mine inspector shall have the right, and it is hereby made his duty, to enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine, and when such inspection is contemplated he shall first notify the person in charge of his intention to make such examination. He shall also have the right and it is his duty to make inquiry into the condition of such mine, workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected with or relating to, as well as to make suggestions providing for the health and safety of persons employed in or about the same, and especially to make inquiry whether or not the provisions of the laws providing for the regulation of

coal mines, or other acts which may hereafter be enacted governing coal mines, have been complied with. The owner, operator, or superintendent of such mine is hereby required to furnish the means necessary for such entry, inspection, examination, inquiry, and exit. It shall also be the duty of the said coal-mine inspector to carefully examine all the coal mines in operation in this state at least every three months, and oftener if necessary, to see that every precaution is taken to insure the safety of all the workmen that may be engaged in said coal mine. The said inspector shall make a record of the visit, noting the time and the material circumstances of the inspection. At the time of making his regular quarterly inspection, in the event of the inspector having in his possession any complaint in writing to the effect that the mining code is being violated, he shall notify the employees that he is about to make such inspection, and if the employees, in some proper manner, select one of their number to accompany the inspector on such inspection, he shall permit such employee to so accompany him. In the event of no such selection being made, the inspector may, if he so desire, request some employee to accompany him. The owner or operator shall at all times have the right to personally accompany the inspector while inspecting his property, or to designate some one to so accompany him.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R. C. M. 1921.

3451. Inspector must not be employed by companies—report to governor. The said state coal-mine inspector, while in office, shall not act as agent for any corporation, superintendent or manager of any mines, and shall in no manner whatever be under the employ of mining companies, nor shall he be interested in any coal-mining operation, either as owner, lessee, or otherwise. It shall be the duty of the industrial accident board, on or before the first day of January of every year, to make a report to the governor of the proceedings of such state coal-mine inspector and the conditions of each and every coal mine in the state, stating therein all accidents that have happened in or about said mine or mines, and to set forth in said report all such suggestions as he may deem important as to any further legislation on the subject of coal mines.

History: En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R. C. M. 1921.

3452. Instruments to be furnished to inspector. For the more efficient discharge of the duties herein imposed upon him, the said state coal-mine inspector shall be furnished, at the expense of the state, with an anemometer, a safety-lamp, and whatever other instruments or other appliances may be necessary in order to carry into effect the provisions of the acts regulating coal mines.

History: En. Sec. 7, Ch. 120, L. 1911; re-en. Sec. 3452, R. C. M. 1921.

3453. Inspector to post statement of mine at entrance. The state coal-mine inspector shall post up in some conspicuous place at the top of each mine visited and inspected by him a plain statement of the conditions of such mine, showing what, in his judgment, is necessary for the better protection of the lives and health of persons employed in such mine; such statement shall give the date of inspection, and be signed by the said in-

spector. He shall also post a notice at the landing used by the men, stating what number of men may be permitted to ride on the cage, car or cars at one time, and at what rate of speed men may be hoisted and lowered on the cage, car or cars in accordance as hereinafter provided for in this act. He must observe especially that the code of signals provided in the act of regulating coal mines between engineer and topmen and bottom-men is conspicuously posted for the information of all employees.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R. C. M. 1921.

3454. Inspector ex-officio sealer of weights and measures. The state coal-mine inspector is hereby made, equally with the secretary of state, ex-officio sealer of weights and measures, in so far as the same relates to coal mines and coal mining, and as such is empowered to test and compare all weights and measures used in weighing and measuring coal at any coal mines, or used in measuring air-passages or other openings in coal mines, with the standards of weights and measures kept by the state sealer of weights and measures. Upon the written request of any coal-mine owner or operator, or ten coal miners employed at any one mine, it shall be his duty to test and prove any scale or scales at such mine against which complaint is directed, and if he shall find that they or any of them do not weigh correctly, he shall call the attention of the mine owner, lessor, or operator to the fact, and direct that said scale or scales be at once overhauled and readjusted so as to indicate only true and correct weights, and he shall forbid the further operation of such scale until such scales are adjusted. In the event that such test shall conflict with any test made by any other sealer of weights and measures, or under and by virtue of any municipal ordinance or regulation, then the test by such state coal-mine inspector shall prevail.

History: En. Sec. 10, Ch. 120, L. 1911; re-en. Sec. 3454, R. C. M. 1921.

3455. Standard test weights to be furnished to inspector. For the purpose of carrying out the provisions of this act, the state coal-mine inspector shall be furnished by the state with such sets of standard weights suitable for testing the accuracy of track-scales, and of all smaller scales at mines, as may in the judgment of the state coal-mine inspector be necessary; said test weights shall remain in the custody of the state coal-mine inspector for use at any point within the state, and for any amounts expended by him for the storage, transportation, or the handling of the same, he shall be fully reimbursed upon making proper entry of the proper items in his expense voucher.

History: En. Sec. 11, Ch. 120, L. 1911; re-en. Sec. 3455, R. C. M. 1921.

3456. Refusal of mine operator to allow examination or to furnish facilities for examination. If any owner, lessor, or operator shall refuse to permit such inspection, or to furnish the necessary facilities for making such examination and inspection, the inspector shall file his affidavit setting forth his refusal with the judge of the district court in said county in which said mine is situated, either in term-time or vacation, and obtain an order on such owner, operator, or agent so refusing as aforesaid, commanding him to permit and furnish such necessary facilities for the inspection

of such coal mine, or to be adjudged to stand in contempt of court and punished accordingly.

History: En. Sec. 12, Ch. 120, L. 1911; re-en. Sec. 3456, R. C. M. 1921.

3457. Investigation of charges for neglect of duty. Whenever a petition signed by fifty or more reputable citizens, legal residents of the state, verified by oath by two or more of the said petitioners, and accompanied by a bond in the sum of five hundred dollars, running to the state, executed by two or more freeholders, approved and accepted by the clerk of the district court of the county or counties of their residence, conditioned for the payment of all costs and expenses arising from the investigation of the charges, is filed with the clerk of the district court setting forth that the state inspector of mines neglects his duties or is incompetent, or is guilty of malfeasance in office or misfeasance in office, it shall be the duty of the district court of the county to issue a citation in the name of the state to the said inspector to appear, at not less than five days' notice, on a day fixed, before said court, and the court shall then proceed to inquire into and investigate the allegations of the petitioners; such action shall be prosecuted by the county attorney.

History: En. Sec. 13, Ch. 120, L. 1911; re-en. Sec. 3457, R. C. M. 1921.

3458. Removal of coal-mine inspector—procedure—cost. If the court finds that the said state coal-mine inspector is neglectful of his duties or incompetent to perform the duties of his office, or that he is guilty of malfeasance or misfeasance in office, the court shall certify the same to the industrial accident board, who shall declare the office of said state coal-mine inspector vacant, and proceed in compliance with the provisions of this act to fill the vacancy; and the costs of such investigation shall, if the charges are sustained, be imposed upon the said state coal-mine inspector.

History: En. Sec. 14, Ch. 120, L. 1911; amd. Sec. 2, Ch. 20, L. 1921; re-en. Sec. 3458, R. C. M. 1921.

3459. Board of examiners of applicants for coal-mine inspector, foreman and examiner—appointment. The industrial accident board of the state shall within sixty days after the approval of this act, upon the recommendation of the coal miners of the state, appoint one practical coal miner, who shall be a certified mine foreman, and actively employed in coal mining in the state of Montana; one mine manager or superintendent who shall be recommended to the industrial accident board by a majority of the coal operators of the state of Montana, who, with the state coal-mine inspector, shall constitute a board of examiners to pass upon the qualifications of all applicants for the position of state coal-mine inspector, mine foreman and mine examiner for the state of Montana. They shall hold office for four years and until their successors, appointed in the same manner, are appointed and qualified. Vacancies upon the said board of examiners shall be filled by the industrial accident board, in accordance with the intent and provisions of this act.

History: En. Sec. 15, Ch. 120, L. 1911; amd. Sec. 1, Ch. 160, L. 1921; re-en. Sec. 3459, R. C. M. 1921.

3460. Examination of applicants—scope—certificates of competency—revocation. It shall be the duty of the said board to examine into the

qualifications of all applicants for the appointment to the position of state coal-mine inspector, and applicants for the examination for mine foreman and mine examiner of the state of Montana, by conducting a thorough examination as to their knowledge of mine workings, ventilation, gases, fire-damp, machinery and actual experience in underground coal mining, and general worthiness of each applicant. The examination for applicants for state coal-mine inspector shall be in writing, and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty years; has had at least ten years' experience in underground coal mining in the United States, and at least one year's experience in underground coal mining in the state of Montana; and the manuscript and other papers of all applicants, together with the tally sheet and the solution of each question as given by the examining board, shall be filed with the industrial accident board as public documents, but such applicant shall undergo an oral examination pertaining to explosive gases and safety-lamps. The board of examiners shall file with the industrial accident board the names of all persons who shall have successfully passed the examination. From those so named the industrial accident board shall select one person to be state coal-mine inspector, but no man shall be eligible for the appointment as state coal-mine inspector who has any pecuniary interest in any coal mines, either directly or indirectly, as owner, lessee, or employer, or otherwise.

(a) The examination for mine foreman shall consist of oral and written questions, on theoretical and practical mining, on the nature and properties of noxious, poisonous and explosive gases found in the mines, and on the different systems of working and ventilating coal mines. The board shall issue to those examined and found to possess requisite qualifications, certificates of competency for the position of mine foreman, but such certificates shall be granted only to persons of twenty-three years of age, or over, of good, moral character, citizens of the United States and residents of the state of Montana, and with at least five years' practical experience as a coal miner.

(b) Persons seeking certificates of competency as mine examiner or fire boss must produce evidence, satisfactory to the board, that they are citizens of the United States, residents of the state of Montana; have had at least five years' practical experience as a coal miner; at least twenty-three years of age, and of good repute and temperate habits. They must prepare to submit to, and satisfactorily pass, an examination as to their experience in mines generating dangerous and explosive gases; their practical and technical knowledge of the nature and properties of fire-damp, the laws of ventilation, and the structure and use of the safety-lamp. Manuscripts and other papers of all the applicants for the position of mine foreman, and mine examiner, together with the tally sheets and the solution of each question as given by the examining board, shall be filed with the industrial accident board as public documents. All papers and blanks, blank books and stationery used at the examination, must be furnished by the industrial accident board, and each candidate for examina-

tion for the position of state coal-mine inspector, mine foreman, and mine examiner shall be given such questions, as are required, in writing, and each question shall be on a separate paper. Candidate must return such papers to the board, with answers to questions thereon, attested by his signature.

(c) When any person having been granted a certificate of competency by the state of Montana, to act as mine foreman, fire boss or mine examiner, is charged with gross, or criminal carelessness, or intemperance, while in the performance of his duties, it shall be the duty of the state coal-mine inspector to make a thorough investigation of the charge, and, upon satisfactory proof of such charge, to revoke said certificate of competency; provided, that such person whose certificate has been so revoked may appeal from such action of the state coal-mine inspector to the state board of coal-mine examiners, but such revocation shall continue until the state board of coal-mine examiners, as provided for in this act, shall otherwise determine.

History: En. Sec. 16, Ch. 120, L. 1911; amd. Sec. 2, Ch. 160, L. 1921; re-en. Sec. 3460, R. C. M. 1921.

3461. Applications for examinations—how made. Applications to the said board for examination for state coal-mine inspector must be made in writing, and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty years; has had at least ten years' experience in underground coal mining in the United States, and at least one year's experience in underground coal mining in the state of Montana.

History: En. Sec. 17, Ch. 120, L. 1911; re-en. Sec. 3461, R. C. M. 1921.

3462. Selection by governor. The board of examiners shall file with the governor the names of all persons who shall have successfully passed the examination. From those so named the industrial accident board shall select one person to be state coal-mine inspector; provided, that any one who has served capably as state coal-mine inspector for one full term, upon making written application to the board setting forth these facts, shall be certified to the governor as properly qualified for appointment, but no man shall be eligible for the appointment as state coal-mine inspector who has any pecuniary interest in any coal mine, either directly or indirectly, as owner, lessee, or employer, or otherwise.

History: En. Sec. 18, Ch. 120, L. 1911; re-en. Sec. 3462, R. C. M. 1921.

3463. Oath and meetings of examining board—basing per cent. The board of examiners appointed under this act shall each take the constitutional oath before some person duly authorized by law to administer an oath.

The board shall meet at the call of the state coal-mine inspector for the purpose of examining applicants as provided for in section 3459 of this code, on the second Monday in June of each year, in the city of Billings, in the county court house, and on the third Monday in June of each year, in the city of Great Falls, in the county court house. Public notice of meetings of the board for the purpose of holding examinations, shall be

given by the board, by posting of notices in the postoffice and at the coal mines in the several coal mining towns throughout the state, at least fifteen days previous to the examination, and the publication in at least one paper in the county wherein coal mines are located, two consecutive weeks previous to the holding of examination.

No person shall be certified as competent whose average per cent. shall be less than seventy-five per cent., and his certificate shall show what per cent. the applicant has attained, and such certificate shall be valid only when signed by a majority number of the examining board. The examining board shall, immediately after the examination, furnish to each person who comes before it to be examined, a copy of all questions, whether oral or written, which were given at the examination, which shall be marked solved right, imperfect or wrong, as the case may be, together with a certificate of competency to each candidate who shall have at least seventy-five per cent.

History: En. Sec. 20, Ch. 120, L. 1911; amd. Sec. 4, Ch. 160, L. 1921; re-en. Sec. 3463, R. C. M. 1921.

3464. Examination of candidates. The board shall then proceed to examination of those who may present themselves as candidates for examination as provided for in section 3459 of this code, and who shall have complied with the requirements necessary to entitle such applicant to be examined as provided for in section 3460 of this code.

History: En. Sec. 21, Ch. 120, L. 1911; amd. Sec. 5, Ch. 160, L. 1921; re-en. Sec. 3464, R. C. M. 1921.

3465. Compensation of board of examiners—expenses. The members of the examining board, except the state coal-mine inspector, shall receive as a compensation the sum of ten dollars each day, for a term not exceeding two meetings of five days each in any year, and whatever sum is necessary to reimburse them for such traveling expenses as may be incurred in the discharge of their duties. All such salaries and expenses of the members of the board shall be paid upon vouchers duly sworn to by each member of the said board and approved and ordered by the state board of examiners, and the state auditor is hereby authorized to draw his warrants on the state treasurer for the amounts thus shown to be due, payable out of any money in the state treasury, not otherwise appropriated.

History: En. Sec. 22, Ch. 120, L. 1911; amd. Sec. 6, Ch. 160, L. 1921; re-en. Sec. 3465, R. C. M. 1921.

3466. Coal-mine inspector—appointment and term. The industrial accident board shall, from the names certified to them by the said board of examiners, appoint a state coal-mine inspector for the state of Montana, who shall hold office at the pleasure of said board.

History: En. Sec. 23, Ch. 120, L. 1911; amd. Sec. 3, Ch. 20, L. 1921; re-en. Sec. 3466, R. C. M. 1921.

3467. Board of examiners of coal-mine inspectors. Every four years the industrial accident board shall in the manner provided in section 3459 of this code appoint a board of examiners to pass upon the qualifications of applicants for coal-mine inspector, which board shall be constituted,

sworn and paid, and shall perform the same duties as the board provided for in said section during the term for which they were appointed.

History: En. Sec. 24, Ch. 120, L. 1911; amd. Sec. 4, Ch. 20, L. 1921; re-en. Sec. 3467, R. C. M. 1921.

3468. Examining board may adopt rules. Each successive board of examiners shall have the power to adopt their own rules and regulations for examination as will best serve the purpose of this act; said rules not to conflict with the manner of examination as prescribed by section 3460 of this code.

History: En. Sec. 26, Ch. 120, L. 1911; re-en. Sec. 3468, R. C. M. 1921.

3469-3471. Repealed—Chapter 142, laws of 1923.

3472. Certificates of qualification, when and how granted. Certificates of qualification to state coal-mine inspector, mine foreman, and mine examiner shall be granted by the board of examiners herein provided for, to each applicant who shall have passed a successful examination. The certificate shall be in a manner and form as shall be prescribed by the industrial accident board, who shall keep a record in their department of all such certificates granted. Each certificate shall contain the full name and age and birthplace of applicant, and also the length or nature of his previous service in coal mines.

History: En. Sec. 30, Ch. 120, L. 1911; amd. Sec. 7, Ch. 160, L. 1921; re-en. Sec. 3472, R. C. M. 1921.

3473. Qualifications for mine examiners. Persons seeking certificates of competency as mine examiners or fire-boss must produce evidence satisfactory to the board that they are citizens of the United States, residents of the state of Montana, have had at least five years' practical experience in working of coal mines, at least twenty-three years of age, and of good repute and temperate habits. They must prepare to submit to and satisfactorily pass an examination as to their experience in mines generating dangerous and explosive gases, their practical and technical knowledge of the nature and properties of fire-damp, the laws of ventilation, and the structure and use of the safety-lamp.

History: En. Sec. 31, Ch. 120, L. 1911; re-en. Sec. 3473, R. C. M. 1921.

3474. Examining board shall grant certificates. The said board of examiners shall meet at the call of the state coal-mine inspector, who shall call them upon receipt of five requests for examination, and shall grant certificates to all persons whose examination shall disclose their fitness for the duties of mine foreman as above classified, or mine examiner or fire-boss, and such certificates shall be sufficient evidence of the holder's competency for the duties of said position as far as it relates to the purpose of this act; provided, that any person who shall have been employed as mine foreman continually for a period of one year preceding the approval of this act, by the same firm, person, or corporation, shall be granted a certificate without undergoing such examination, but shall not be employed by any other person, firm, or corporation without having successfully undergone such examination. No person shall be certified as competent whose average percentage shall be less than seventy-five per centum on his

entire examination, and such certificates shall designate the position qualified for, and shall be valid only when signed by a majority of the examining board.

History: En. Sec. 32, Ch. 120, L. 1911; re-en. Sec. 3474, R. C. M. 1921.

3475. Certificates may be issued to those holding proper certificates.

The board may exercise its discretion in issuing certificates of any class, without examination, to persons presenting with proper credentials certificates for the same or a similar position issued by competent authorities in this or other states; provided, however, that for every such certificate issued the board shall charge a fee of five dollars.

History: En. Sec. 33, Ch. 120, L. 1911; re-en. Sec. 3475, R. C. M. 1921.

3476. Applications for examination—how made—fees. An applicant for examination for any certificate herein provided for, before being examined, shall register his name with the state coal-mine inspector at Helena, Montana, and file with him the credentials required by this act, to-wit, an affidavit as to all matters of fact establishing his right to and qualifications for receiving the examination, and a certificate of good character and temperate habits, signed by at least ten of the citizens who know him best in the place in which he lives. Each candidate, before receiving the examination, shall pay to the state coal-mine inspector the sum of two dollars as an examination fee, and those who pass the examination for which they are entered, before receiving their certificate, shall also pay to the state coal-mine inspector the further sum of three dollars each as a certificate fee. All such fees shall be duly accounted for by the state coal-mine inspector, and turned into the state treasurer at the close of the fiscal year.

History: En. Sec. 34, Ch. 120, L. 1911; re-en. Sec. 3476, R. C. M. 1921.

3477. Repealed—Chapter 142, laws of 1923.

3478. Violations. Any person who acts in the capacity of mine foreman, mine examiner, or fire-boss, without a certificate of competency as provided for in this act, shall be deemed guilty of an offense against this act; provided, however, the state coal-mine inspector shall have the power to grant permits to persons to perform the duty of mine foreman, mine examiner, or fire-boss as provided for in this act, who may be employed by any company, corporation, association, person, or persons engaged in the operating of any coal mines in the state of Montana, until such time as the person so employed has had an opportunity to be examined as to his competency by the board of examiners provided for in this act, but no longer.

Every company, corporation, association, person, or persons operating any coal mine or coal mines in the state of Montana, who employs any uncertified mine foreman, mine examiner, or fire-boss, except as provided for in section 3475 of this code, shall be deemed guilty of an offense against this act; provided, however, that in cases of emergency any competent man may be employed and act as a temporary mine foreman, examiner, or fire-boss, until a certificate or permit can be obtained, not to exceed a

period of thirty days, without violating this act or incurring any of its penalties.

History: En. Sec. 36, Ch. 120, L. 1911; re-en. Sec. 3478, R. C. M. 1921.

3479. Necessary to have maps of coal mines. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of such mine, drawn to a scale of not less than two hundred feet to one inch, and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R. C. M. 1921.

3480. Underground survey. For the underground working the said map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine, all excavations, entries, rooms, and cross-cuts, the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings, the location of the fan or furnace, the location of the permanent pumps, hauling engines, engine-planes, and fire-walls, the location of any standing water which might prove a menace to life or danger to property from flood, and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R. C. M. 1921.

3481. Map for every seam. A separate and similar map, drawn to the same scale in all cases, shall be made of each and every seam, which, after the passage of this act, shall be worked in any mine, and the maps of all such seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting the same.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R. C. M. 1921.

3482. Map of the surface. Every such map or plan, or, at the option of the operator, a separate map, shall show the surface boundary lines contiguous to the workings and pertaining to each mine, also all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the said boundary lines; and in all cases, if of a separate surface map, the same shall be drawn on transparent cloth or paper, so that it can be laid upon the map of the underground workings, and thus truly indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R. C. M. 1921.

3483. Copies of maps for state coal-mine inspector. The original or true copies of all such maps shall be kept in the office at the mine, and true copies thereof shall also be furnished the state coal-mine inspector within thirty days after the completion of the same. The maps so delivered to the inspector shall be the property of the state, and shall remain in the custody of the said inspector during his term of office, and be delivered by him to his successor in office. They shall be kept at the office of the

inspector and be open to inspection by all persons interested in the same, but such examination shall only be made in the presence of the inspector, and he shall not permit any copies of the same to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R. C. M. 1921.

3484. Annual surveys. An extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1st of every year, and the result of said survey, with the date thereon, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine, and all extensions of the workings to the most advanced face or boundary of said workings which have been made since the preceding survey. The said changes and extensions shall be entered upon the copies of the maps in the hands of the state coal-mine inspector, or new copies thereof be furnished him, within thirty days after the last survey is made. Whenever the operator of any mine shall neglect or refuse, or for any cause not satisfactory to the state coal-mine inspector fail, for a period of three months, to furnish the said state coal-mine inspector the map or plan of such mine, or a copy thereof, or of the extension thereto, as provided for in this act, the said state coal-mine inspector is hereby authorized to make or cause to be made an accurate map or plan of such mine at the expense of the owner or leaser thereof, and the cost of the same may be recovered by law from said owner, leaser, or operator, in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R. C. M. 1921.

3485. Abandoned mines. When any coal mine is worked out, or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a final survey of all available parts of such mine, and the results of the same shall be duly extended on all maps of the mine and copies thereof, so as to show all excavations and the most advanced workings of the mine, and their exact relations to the boundary or section lines on the surface.

The state coal-mine inspector may order a survey to be made of the workings of any mine which is about to be abandoned, or of which he has reason to believe the maps are inaccurate, whenever in his judgment the safety of the workmen, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. Such survey shall be paid for by the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R. C. M. 1921.

3486. Mine operators to furnish wash houses for employees. It shall be the duty of the owner, operator, or superintendent of any coal mine in the state of Montana to provide a suitable building, not an engine or boiler house, for the use of the persons employed in such mine, for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall not be over eight hundred feet from and convenient to the principal entrance of such

mine when practicable to do so. When not practicable to build the wash house within the said distance and still conform to the other requirements of this section, the state coal-mine inspector may give written permission to place the building at a greater distance from the mine than that herein specified, and the operator shall not be guilty of violation of this section. The said building shall be maintained in good order, be properly lighted and heated, and supplied with pure cold and warm water, and be provided with facilities for persons to wash, and a suitable locker for each person to be used by him as a repository for his clothes.

If any person shall maliciously injure or destroy, or cause to be injured or destroyed, the said building or any part thereof, or any of the appliances or fittings used for supplying light, heat, or water therein, or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this act and subject to a fine as hereinafter provided for.

History: En. Sec. 44, Ch. 120, L. 1911; re-en. Sec. 3486, R. C. M. 1921.

3487. Oath of weighman—check weighman. The weighman employed at any mine shall subscribe to an oath or affirmation before some officer authorized to administer oaths, to do justice between employer and employee, and to truly and correctly weigh the output of coal from the mines as herein provided. The miners employed by or engaged in working for any mine owner, operator, or lessee of any mine in this state shall have the privilege, if they desire, of employing at their own expense a check weighman, who shall have like equal rights, powers, and privileges in the weighing of coal as the regular weighman, and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be kept conspicuously posted in the weight office, and any weigher of coal or person so employed, who shall knowingly violate any of the provisions of this section, or any owner, operator, or agent of any coal mine in this state, who shall forbid or hinder miners employing or using a check weighman as herein provided, or who shall prevent or wilfully obstruct any such check weighman in the discharge of his duty, shall be deemed guilty of an offense against this act. Whenever the state coal-mine inspector, or his deputy, shall be satisfied that the provisions of this section have been wilfully violated, it shall be his duty to forthwith inform the prosecuting attorney of any such violation, together with all the facts within his knowledge, and the prosecuting attorney shall thereupon investigate the charges so preferred, and if he is satisfied that the provisions of this section have been violated, it shall be his duty to prosecute the person or persons guilty thereof.

History: En. Sec. 45, Ch. 120, L. 1911; re-en. Sec. 3487, R. C. M. 1921.

3488. Must not use false weights. Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines must not arrange or construct them so that fraudulent weighing may be done thereby, and must not knowingly resort to or employ any means whatsoever by reason of which such coal is not correctly weighed and reported in accordance with the provisions of this act.

History: En. Sec. 46, Ch. 120, L. 1911; re-en. Sec. 3488, R. C. M. 1921.

3489. General equipment of shafts. Every hoisting shaft must be equipped with safely constructed substantial cages fitted to guide rails running from the top to the bottom of shaft. Said cages must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and with sheet-iron or steel casings on each side, not less than one-eighth inch in thickness, or wire netting of not less than one-eighth inch in diameter. They must be equipped with safety-catches, said safety apparatus, whether consisting of eccentrics, springs, or other devices, must be securely fastened to each cage, and must be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. Every cage must be fitted with iron bars, chains, or rings in proper place, and sufficient in number to furnish a secure hand hold for every person permitted to ride thereon. Gates not less than four feet high from the bottom of the cage shall be fitted to each cage, and must be used during the regular hoisting or lowering of men; provided, that when such cage is used for sinking only it need not be equipped with such doors as are hereinbefore provided for. At the top landing cage supports, when necessary, must be carefully set and adjusted so as to act automatically and securely hold the cage when at rest.

History: En. Sec. 47, Ch. 120, L. 1911; re-en. Sec. 3489, R. C. M. 1921.

3490. Passageway around the bottom of shafts. At the bottom of every shaft and at every caging place therein a safe and commodious passageway must be cut around such landing place to serve as a travel-way, by which men or animals may pass from one side of the shaft to the other without passing under or on the cage.

History: En. Sec. 48, Ch. 120, L. 1911; re-en. Sec. 3490, R. C. M. 1921.

3491. Gates at the top of shafts. The upper and lower landings at the top of each shaft, and the opening of each intermediate seam from or to the shaft, shall be kept free and clear from loose materials, and shall be securely fenced with automatic or other gates, so as to prevent either men or materials from falling into the shaft.

History: En. Sec. 49, Ch. 120, L. 1911; re-en. Sec. 3491, R. C. M. 1921.

3492. Two places of egress. For every coal mine in this state, whether worked by shaft, slope, or drift, there shall be provided and maintained, in addition to the hoisting shaft, slope, or drift, or other place of delivery, a separate escapement shaft, slope, or drift, or opening to the surface, or an underground communication passageway between every such mine and some other contiguous mine, such as shall constitute two distinct and available means of egress to all persons employed in such coal mine. The time allowed for completing such escapement shaft or drift or making such connections with an adjacent mine, as is required by the terms of this act, shall be three months for shafts, slopes, or drifts, two hundred feet or less in depth or length, six months for shafts, slopes, or drifts less than five hundred feet in depth or length, and more than two hundred, and twelve months for all other shafts, slopes, or drifts or connections with adjacent mines. The time to date in all cases from hoisting of coal from main shaft, slope, or drift.

History: En. Sec. 50, Ch. 120, L. 1911; re-en. Sec. 3492, R. C. M. 1921.

3493. Unlawful to employ more than ten men until escapement connection completed. It shall be unlawful to employ at any one time more men than in the judgment of the state coal-mine inspector is absolutely necessary for speedily completing the connections with the escapement shaft, slope, or drift, or adjacent mine, and said number must not exceed ten men at any one time for any purpose in said mine until such escapement connection is completed.

History: En. Sec. 51, Ch. 120, L. 1911; re-en. Sec. 3493, R. C. M. 1921.

3494. Passageways to escapement. Such escapement shaft or opening, or communication with an adjacent mine aforesaid, shall be constructed in connection with every seam of coal worked in such mine, and all passageways communicating with the escapement shaft or place of exit, from the main hauling ways to said place of exit, shall be maintained free of obstructions, at least five feet wide and five feet in height. Such passageways must be so graded and drained that it will be impossible for water to accumulate in any depression or dip of the same, in quantities sufficient to obstruct the free and safe passage of men. At all points where the passageway to the escapement shaft or other place of exit is intersected by other roadways or entries, conspicuous sign-boards shall be placed indicating the direction it is necessary to take in order to reach such place of exit. Where pillars are being drawn on any entry outside of where other men are working, or where more than fifty per cent. of the coal is taken out in rooms, connections for escapement shall be made with some adjoining entry to provide a safe exit for the men.

History: En. Sec. 52, Ch. 120, L. 1911; re-en. Sec. 3494, R. C. M. 1921.

3495. Distance of escapement from main shaft. The distance between the main shaft and escapement shall not be less than one hundred feet where steel head-frames are used, nor less than three hundred feet where wooden head-frames are used; provided, that where slops or drifts are driven in or on the coal strata, the distance between the escapement road or travelway and the slope drift or hauling way shall not be less than fifty feet.

History: En. Sec. 53, Ch. 120, L. 1911; re-en. Sec. 3495, R. C. M. 1921.

3496. Buildings on surface. It shall be unlawful to erect any inflammable structure or building in any space intervening between the main shaft, slope, or drift and the escapement shaft, slope, or drift on the surface, or any powder-magazine in such location or manner as to jeopardize the free and safe exit of the men from the mine by said escapement shaft, slope, or drift, in case of fire in the main shaft, slope, or drift buildings.

History: En. Sec. 54, Ch. 120, L. 1911; re-en. Sec. 3496, R. C. M. 1921.

3497. Stairway or cages in escapement shaft. The escapement shaft at every mine which does not exceed one hundred feet in vertical depth shall be equipped with safe and ready means for the prompt removal of men from the mine in time of danger, and such means shall be a substantial stairway which shall be provided with the hand-rails and with platforms or landings not more than ten feet apart. Where the escapement exceeds one hundred feet in vertical depth, in place of the stairway, it may be

equipped with a cage for hoisting men, and such cage must be suspended between guides and be so constructed that falling objects cannot strike persons being hoisted upon it. Such cage must be operated by steam or electricity, which power shall be kept available for immediate use at all times, and equipment of said hoisting apparatus shall include a depth indicator, a brake on the drum, a steel or iron cable and safety-catches on the cage; and all such hoisting machinery must be inspected at least once each week by some competent person representing the operating company or owner.

History: En. Sec. 55, Ch. 120, L. 1911; re-en. Sec. 3497, R. C. M. 1921.

3498. Obstructions in escapement shaft. No accumulation of ice or obstruction of any kind shall be permitted in any escapement shaft, nor shall any steam be discharged into said shaft; and all surface or other water which flows therein shall be conducted by rings or otherwise to receptacles for same, so as to keep the stairway or cage free from falling water.

History: En. Sec. 56, Ch. 120, L. 1911; re-en. Sec. 3498, R. C. M. 1921.

3499. Weekly inspection of escapements. All escapement shafts and passageways leading thereto or to the works of a contiguous mine must be carefully examined at least once each week by the mine foreman, or by a man specially delegated by him for that purpose, and the date and findings of such inspection must be entered in a record book in the office at the mine. If obstructions are found, their location and nature must be stated, together with the date on which they were removed.

History: En. Sec. 57, Ch. 120, L. 1911; re-en. Sec. 3499, R. C. M. 1921.

3500. Communication with adjacent mines. When operators of adjacent mines have by agreement established underground communication between said mines as an escapement outlet for the men employed in both mines, the roadways to the boundary on either side shall be regularly patrolled once each week and kept clear of all obstructions to travel by respective operators, and the intervening door shall remain unlocked and ready at all times for immediate use. When such communication has once been established between adjacent mines, it shall be unlawful for the operator of either mine to close the same without the consent of the contiguous operator and the state coal-mine inspector; provided, that when either operator desires to abandon mining operations, the expense and duty of maintaining such communication shall devolve upon the party continuing operations and using the same.

History: En. Sec. 58, Ch. 120, L. 1911; re-en. Sec. 3500, R. C. M. 1921.

3501. Ventilation of mines. The owner, operator, or superintendent of every coal mine, whether operated by shaft, slope, or drift, shall provide and hereafter maintain ample means of ventilation for the circulation of air through the main entries, cross entries, and all other working places, to an extent that will dilute, carry off, and render harmless the noxious or dangerous gases generated in the mine, affording not less than one hundred cubic feet per minute for each and every person employed therein, and not less than six hundred cubic feet per minute for each and every animal in the mine; but in any mine, or section of a mine, where fire-damp

is generated, not less than one hundred and fifty cubic feet of air per minute shall be provided for each person, or as much more as may be necessary to keep such section free from fire-damp. The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement shall be made by the foreman or his assistants once a week at the inlet and outlet airways, and also at or near the face of each entry, and shall be recorded in the book kept for that purpose at the mine office. The quantity of air as provided for in this act for each person shall be conducted to each working place.

In rooms generating fire-damp, the volume of air required by this act shall be conducted to the face thereof by the use of brattice-cloth or other suitable means.

History: En. Sec. 59, Ch. 120, L. 1911; re-en. Sec. 3501, R. C. M. 1921.

3502. Pressure-gauges. At each mine generating fire-damp so as to be detected by a safety-lamp a water-gauge for the purpose of recording the pressure of vacuum of the main air current shall be provided and maintained, which shall be kept in constant use, and records preserved subject to the inspection of the state coal-mine inspector or his authorized representative.

History: En. Sec. 60, Ch. 120, L. 1911; re-en. Sec. 3502, R. C. M. 1921.

3503. Number of persons permitted to work in same air current. The current of air in mines must be split or subdivided so as to give a separate current to a number not exceeding one hundred men at work, and the inspector has the discretion to order a separate current for a smaller number of men if special conditions render it necessary.

History: En. Sec. 61, Ch. 120, L. 1911; re-en. Sec. 3503, R. C. M. 1921.

3504. Cross-cuts and brattices for ventilation. Cross-cuts between the entries, except where the same are within the confines of shaft bottom pillars, or are hereafter provided for, shall be made not exceeding sixty (60) feet apart, unless sufficient brattice is used to keep the air current up to the entry face, in which case they shall not exceed one hundred (100) feet apart. Where entries or rooms are being driven by entry driving machines, or any other mechanical loading device, or where local mechanical methods of ventilation are installed to furnish air to the workmen at the face, cross-cuts may be driven at not exceeding three hundred (300) feet apart, provided that brattice, tubing or some other device is used sufficient to give at the face twice the amount of air per man and animal provided for in section 3501, and to clear said face of powder smoke before the men are required to return to work therein. In mines or sections of a mine where no local mechanical methods of ventilation are installed, when there is a solid block on one side of a room, cross-cuts shall be made between such room and the adjacent room not to exceed sixty (60) feet apart; where there is a breast or group of rooms, a cross-cut shall be made on one side or the other of each room, except the room adjoining said block, not to exceed fifty (50) feet from the outside corner of the crosscut to the nearest corner of the entrance of the room, and on the opposite side of the same room a cross-cut shall be made not to exceed

ninety (90) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and thereafter cross-cuts shall be made not to exceed eighty (80) feet apart on each side of the room. The required air current shall be conducted to the cross-cut nearest the face of each entry or room.

Brattices between permanent inlet and outlet airways shall hereafter be constructed in a substantial manner of brick, blocks, masonry, concrete, or non-perishable material. Rooms must not be worked in advance of the ventilating current.

History: En. Sec. 62, Ch. 120, L. 1911; re-en. Sec. 3504, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1927.

3505. Operation of ventilating fans—furnaces, etc. All ventilating fans, furnaces, and any means in use to ventilate mines shall be kept in constant operation, day and night, in mines generating fire-damp, or where two shifts are being worked. Where no fire-damp is generated, or only one shift is worked, the fan, furnace, or other means of ventilation shall be started and kept running not less than two hours before the time to begin work. Should it at any time become necessary to stop the fan or other means of ventilation on account of accident or needed repairs to any part of the machinery, furnace, or other means of ventilation connected therewith, or by reason of any unavoidable cause, it shall then be the duty of the mine foreman, or any official in charge, after first having provided as far as possible for the safety of the persons employed in the mine, to order said fan or other means of ventilation to be stopped so as to make the necessary repairs or to remove any other difficulty that may have been the cause of such stoppage. All ventilating furnaces in mines shall, for two hours before the appointed time to begin work and during working hours, be properly attended by a person employed for the purpose.

History: En. Sec. 63, Ch. 120, L. 1911; re-en. Sec. 3505, R. C. M. 1921.

3506. Overcasts, air-bridges and doors—how to be constructed. In all mines, all main air-bridges or overcasts built after the passage of this act shall be constructed of masonry or other incombustible material of ample strength, or be driven through the solid strata. In all mines the doors used in guiding and directing ventilation of the mine shall be so hung and adjusted that they will close themselves, or can be supplied with springs or pulleys so that they cannot be left standing open, and an attendant shall be employed at all principal doors through which cars are hauled, for the purpose of opening and closing said doors when trips of cars are passing to and from workings, unless an approved self-acting door is used. Necessary room shall be provided at each door so as to protect said attendant from being run over by the cars while attending to his duties, and persons employed for this purpose shall at all times remain at their post of duty during working hours. On every inclined plane, or where haulage is done by machinery, and where a door is used, an extra door shall be provided to use in case of necessity.

History: En. Sec. 64, Ch. 120, L. 1911; re-en. Sec. 3506, R. C. M. 1921.

3507. Underground stables. Where livestock is kept underground, the stables or stalls shall be separated from the main air-course by not less

than twenty feet of solid strata, or a solid wall of brick masonry or concrete not less than twelve inches in thickness. The construction of the stable shall, as far as possible, be free from all combustible material. No hay or straw shall be taken into the mine unless same be compressed into compact bales, and only from time to time in such quantities as will be required for two days' use. No greater quantity of hay or straw shall be stored in the mine or stable, and when such is taken inside the mine it shall be taken to the stable at once and placed in a separate room provided therein for the same. The stable must be so placed that the air ventilating the same is returned immediately to the main outlet air-course, and not allowed to go further into the mine to where men are working. The connections between the air-courses and the stables must be fitted with substantial doors, placed so that they can be readily reached in the event of fire in the stable. Where conditions prohibit the use of entirely incombustible material in the construction of the stable, the doors leading to or from the same shall be made of iron or steel plate, not less than one-quarter inch in thickness, set in masonry or concrete walls. The lights used in the stable shall be incandescent lamps placed so that same will not be injured by the stock or the persons required to enter the stable, or lanterns of railroad type suitable for using lard or signal oil, and only such oil shall be used therein. All refuse and waste shall be promptly removed from the stable in the mine, and shall not be allowed to accumulate.

Stables constructed underground after the passage of this act shall be located not nearer than one hundred and fifty feet to any opening to the mine used as a means of ingress or egress.

History: En. Sec. 65, Ch. 120, L. 1911; re-en. Sec. 3507, R. C. M. 1921.

3508. Precautions when approaching abandoned workings. Whenever any working place of a mine approaches within one hundred feet of the abandoned workings of another mine, as indicated by an accurate survey, or while driving any working place parallel with the workings of such abandoned mine within one hundred feet thereof, and such abandoned mine cannot be explored, or when same contains fire-damp or water which may inundate such working place, the mine foreman shall not permit such working place to be advanced until a drill hole has been extended not less than twelve feet in the center of such working place, and a flank hole not less than twelve feet extended on each rib, starting at the working face after taking out each cut of breaking.

Whenever the limits of an abandoned mine are not known by actual survey, the above rule shall apply whenever any working place approaches within two hundred feet of the supposed limits of such abandoned mine.

History: En. Sec. 66, Ch. 120, L. 1911; re-en. Sec. 3508, R. C. M. 1921.

3509. Timber and supplies. The operator of any mine shall keep an adequate supply of suitable timber constantly on hand, and deliver to the working place of each miner the props of approximate length, caps, and other timbers necessary to securely prop the roof thereof. Such props, caps, and other timbers shall be delivered in mine cars at the point

where the miner receives his empty cars, or unloaded at the entrance to the room.

History: En. Sec. 67, Ch. 120, L. 1911; re-en. Sec. 3509, R. C. M. 1921.

3510. Hauling roads. On all hauling roads or entries on which the hauling is done by machinery, where men have to pass to or from their work, and on all entries on which the hauling is done by draft-animals, there shall be a clearance on one side of at least two and one-half feet between the car and the rib of such entry. This place shall be kept free from all obstructions, and no material shall be placed thereon. In mines already opened prior to the passage of this act where such clearance does not exist, or in mines where mining conditions prohibit the driving of entries wide enough to give such clearance, places of refuge must be cut in the side wall at least three feet wide, two and one-half feet deep, five feet high, and not more than twenty yards apart, but such places of refuge shall not be required in entries from which rooms have been driven at regular intervals not exceeding twenty yards. All such places of refuge must be kept clear of obstructions, and no material shall be stored nor allowed to accumulate therein.

History: En. Sec. 68, Ch. 120, L. 1911; re-en. Sec. 3510, R. C. M. 1921.

3511. Airways. It shall be the duty of the owner, lessee, or operator of every coal mine to provide and maintain airways of sufficient dimensions, and in no case shall the area of the air-course be less than twenty-five feet in mines operated on the room and pillar system.

History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R. C. M. 1921.

3512. Drainage—traveling ways—obstructions. Standing or stagnant water shall not be allowed to remain in traveling ways, nor shall the intake airways be used by miners or other persons as a depository for excrement or any other refuse. Obstructions of any kind must not be placed in cross-cuts, rooms, or entries used as main airways. Where necessary to provide a traveling way other than the main entries, slope, or drift in any mine for men going to or returning from their work, the same shall be kept clear from debris or obstructions of any kind, and all loose coal, slate, and rock overhead or in rib in traveling ways, where miners have to travel to or from their work, must be taken down or carefully secured.

History: En. Sec. 70, Ch. 120, L. 1911;
re-en. Sec. 3512, R. C. M. 1921.

References

Cited or applied as section 70, chapter 120, laws of 1911, in *Kallio v. Northwestern Improvement Co.*, 47 M 314, 323, 132 P 419.

3513. Examination by foreman. All main airways or traveling ways in any underground workings shall be examined at least twice a week by the mine foreman or some other competent person so directed by said mine foreman, and a record of such inspection shall be kept at the mine office.

History: En. Sec. 71, Ch. 120, L. 1911; re-en. Sec. 3513, R. C. M. 1921.

3514. Removal of combustible matter. It shall be the duty of the mine foreman or his assistant in charge of any coal mine where coal dust or any other inflammable material may accumulate, to cause the same to be

properly saturated with water or with some compounds or chemicals used for such purpose as often as necessary in either air-courses or entries, and all accumulated matter, explosive in its nature, shall be removed from the mine.

History: En. Sec. 72, Ch. 120, L. 1911; re-en. Sec. 3514, R. C. M. 1921.

3515. Mine foreman and his duties. In order to secure efficiency in the coal mines, the operator or superintendent shall employ a competent and practical foreman; said mine foreman shall have passed an examination and obtained a certificate of competency as required by this act, and said mine foreman shall devote the whole of his time to his duties at the mine when in operation.

The mine foreman or his assistant shall visit and examine every working place in the mine at least each alternate day while the miners of such places are or should be at work, and shall examine and see that each working place is secured by timbering so that the safety of the mine is assured; he shall see that a sufficient supply of timbers and material is always on hand at the working places in compliance with this act.

When the mine foreman is personally unable to carry out the requirements of this act as pertaining to his duties, on account of sickness or of other unavoidable conditions, a competent person shall be appointed to act in his place. The said person so appointed shall possess a certificate of competency, either as mine foreman or mine examiner, as provided for in this act, or shall receive a permit to act as such from the state coal-mine inspector's office within thirty-days after taking charge.

Whenever such mine foreman, his assistant, or assistants, shall have an unsafe place reported to him or them, he or they shall order and direct that the same be placed in a safe condition, and until such is done no person or persons shall enter such unsafe place except for the purpose of making it safe.

History: En. Sec. 73, Ch. 120, L. 1911; re-en. Sec. 3515, R. C. M. 1921.

Operation and Effect

Defendants being aware of the existence of a pot-hole in a coal mine for a sufficient time before an accident to an em-

ployee to enable them to make a proper examination and repairs, they were bound by this section and were liable in damages for their failure to perform their duty in this respect. *McInness v. Republic Coal Co.*, 49 M 112, 118, 140 P 235.

3516. Mine examiners and their duties. A mine examiner shall be required at all coal mines generating dangerous and explosive gases.

His duty shall be to visit the mine before the men are permitted to enter it, and, first, he shall see that the air current is traveling in its proper course and quantity. He shall inspect all places where men are expected to pass or to work, and observe if there are any recent fall or obstructions in rooms and roadways or accumulations of fire-damp or other unsafe conditions.

He shall especially examine the edges and accessible parts of recent falls and old gobs and air-courses. As evidence of such examination, he shall mark with chalk upon the face of the coal his initial and the date of the month and year; if there is any standing gas discovered he shall leave a danger-signal across every entrance to such place.

He shall make a report on a blackboard provided on the outside of the mine, or at some other convenient place for that purpose, and arranged so that the men can inspect it while passing to their work, showing the conditions of the mine as to the presence of fire-damp, and indicating the place or places where present, if any is present, before he permits any person or persons to enter the mine. He shall complete his inspection before the time for the day-shift men to go to work, and shall personally check each miner or loader into the mine, advising each as to the condition of his working place, and holding back any man whose working place is in dangerous condition. He shall return to the mine with such miners or loaders thus held back, and remain there attending to the removal of any standing gas.

He shall examine parts of the mine not in actual course of working and available, not less than once each three days. He shall see that every part of the mine is kept free from standing gas and all old workings are properly fenced off. He shall examine the mine on idle days and Sundays if any men are required to work in any part of it, and, if any time elapse between the day turn leaving and night turn starting, the places to be worked by night turn must be examined by him with a safety-lamp and reported safe before persons go to them. He shall make a daily record of the conditions of the mine as he has found them, in a book kept for that purpose, which shall be preserved in the office of the company. No miner or loader, when advised by the mine examiner that his working place is dangerous, shall leave the bottom of the shaft or the main partings on slopes or drifts until accompanied by the mine examiner.

History: En. Sec. 74, Ch. 120, L. 1911; re-en. Sec. 3516, R. C. M. 1921.

3517. Safety-lamps. At any mine where fire-damp or other explosive gases are being generated so as to require the use of safety-lamps in any part thereof, the operator of such mine, upon receiving notice from the state coal-mine inspector or the mine examiner that one or more lamps are necessary to the safety of the men in such mine, shall at once procure and keep for use such number of the most improved safety-lamps as may be necessary. All safety-lamps used for working therein shall be the property of the operator, and shall remain in the custody of the mine foreman or other competent person, who shall clean, trim and fill, examine, and deliver the same, locked and in safe condition, to the men when entering the mine, and shall receive the same from the men at the end of their shift. Persons using such lamps shall be responsible for the conditions and proper use of safety-lamps while in their possession.

History: En. Sec. 75, Ch. 120, L. 1911; re-en. Sec. 3517, R. C. M. 1921.

3518. Only safety-lamps to be used. In every working approaching any place where there is likely to be an accumulation of explosive gases, or in any working where danger is imminent from explosive gases, no light or fire other than a locked safety-lamp shall be allowed or used.

History: En. Sec. 76, Ch. 120, L. 1911; re-en. Sec. 3518, R. C. M. 1921.

3519. Keys for safety-lamps. No one except a duly authorized person shall have in his possession a key or other contrivance for the purpose of

unlocking any safety-lamp in any mine where locked safety-lamps are used. No lucifer matches or any other apparatus for striking light shall be taken into said mine or parts thereof.

History: En. Sec. 77, Ch. 120, L. 1911; re-en. Sec. 3519, R. C. M. 1921.

3520. Firing of blasts where safety-lamps are used. In any mine where locked safety-lamps are used, no blast shall be fired in such portion of the mine except by permission of the mine foreman or his assistants, and before a blast is fired the person in charge must examine the place and adjoining places and satisfy himself that it is safe to fire such blast before such permission is given.

History: En. Sec. 78, Ch. 120, L. 1911; re-en. Sec. 3520, R. C. M. 1921.

3521. Storing of explosives in mines. No workman shall have at any time more than one twenty-five pound keg of black powder in the mine, nor more than five pounds of high explosives. Every person who has powder or other explosives in a mine shall keep it or them in a wooden or metallic box or boxes, securely locked, and said boxes shall be kept at least five feet from the track, and no two powder-boxes shall be kept within twenty-five feet of each other, nor shall black powder and high explosives be kept in the same box.

History: En. Sec. 79, Ch. 120, L. 1911; re-en. Sec. 3521, R. C. M. 1921.

3522. Manner of handling explosives. Whenever a workman is about to open a box or keg containing powder or other explosives, and while handling the same, he shall place and keep his lamp at least five feet distant from such explosive, and in such position that the air current cannot carry sparks to it, and no person shall approach nearer than five feet to any open box containing powder or other explosives with a lighted lamp, lighted pipe, or other thing containing fire.

History: En. Sec. 80, Ch. 120, L. 1911; re-en. Sec. 3522, R. C. M. 1921.

3523. Copper tools. In the process of charging and tamping a hole, no person shall use an iron or steel pointed needle. The needle used in preparing a blast shall be made of copper, and the tamping-bar shall be tipped with at least five inches of copper. Some soft material must always be placed next the cartridge or explosive.

History: En. Sec. 81, Ch. 120, L. 1911; re-en. Sec. 3523, R. C. M. 1921.

3524. System of blasting. A workman who is about to explode a blast with a squib shall not shorten the match, saturate it with oil, or ignite it except at the extreme end. He shall see that all persons are out of danger from probable effects of such shots, and shall take measures to prevent any one from approaching by shouting "Fire" immediately before lighting the fuse or squib.

When firing shots in close proximity to other workmen on rib or in cross-cut driven for air or other purposes, he or they, firing such shots, shall notify in person or by signals the workmen in adjoining rooms or other place or entry.

When a squib is used and a shot misses fire, no person shall return until five minutes shall have elapsed. When a fuse is used and a shot misses

fire, no person shall return until one hour for each foot of fuse used shall have elapsed. When it is necessary to tamp dynamite, nothing but a wooden tamper shall be used.

No hole shall be drilled to a greater depth than the cut or shearing, neither shall fine coal, coal dust, or any combustible material be used for tamping any hole.

No workman shall put off any blast in any mine known as a "following shot."

At all coal mines where the coal is loaded by hand by individual miners or loaders the firing of shots shall be restricted to a specific time at the end of each shift, except that in entries, slants and room necks, when necessary, one snubbing shot may be fired in each at the middle of the shift. No miner shall fire a shot until the time appointed for him to do so, and then only in such rotation as designated by the proper authority. After each blast he shall exercise great care in examining the roof and coal and shall secure them safely before beginning to load coal. Where shooting is done by shift work the same precaution shall be used by some person or persons designated by the operator.

In any coal mine, or any section of a coal mine, where the coal is loaded out by any mechanical means, conveyor, power shovel, entry driving machine, scraper loader or other loading device, or where new methods of mining are being developed that require shooting more than once per shift, the firing of shots may take place at any time during the shift, when necessary, after proper inspection by competent men as may be designated by the operator, provided that efficient means are employed to carry the powder smoke as directly and as quickly as possible to the return air-way and also that the workmen are not required to work in a smoky atmosphere.

When draw slate is over the coal, the miner shall not go underneath the draw slate until it is made safe from falling by securely posting it, and he shall not remove the posts until the coal is removed and he is ready to take down the draw slate. He shall not place in the gob or refuse pile any fine coal or coal dust but shall load same into cars. When more than one shot is to be fired at the same time with fuse, in the same working place, different lengths of fuse shall be used so as to prevent any possibility of the shots going off simultaneously.

History: En. Sec. 82, Ch. 120, L. 1911; re-en. Sec. 3524, R. C. M. 1921; amd. Sec. 1, Ch. 27, L. 1927.

3525. Care of working places. Each miner shall examine his working place upon entering the same, and shall not commence to mine or load until it is made safe. He shall be very careful to keep his working place in safe condition at all times.

Should he at any time find his place becoming dangerous from any cause or condition, to such an extent that he is unable to take care of the same personally, he shall at once cease work and notify the mine foreman or his assistant, as provided for hereinbefore in this act, of such danger, and upon leaving such place he shall place some plain warning at the entrance thereof to warn others from entering into the said danger, and he shall not return to his place until ordered to do so by the mine

foreman or his assistant. Each miner, or other person employed in a mine, shall securely prop the roof of the working place therein under his control, and shall obey any order or orders given by the superintendent or mine foreman relating to the width of his working place or safety of the same. Such miner or other person shall not be held to have violated the provisions of this section if the owner, lessee, agent, superintendent, or mine foreman fail to supply the necessary props, caps, timber, or necessary material as provided for in this act.

Each miner or other person shall avoid waste of props, caps, timber, or other material. When he has props, caps, timber, or other material unsuited for his purpose, he shall not cover them up or destroy them, but shall place same near the track where they can be readily seen.

History: En. Sec. 83, Ch. 120, L. 1911; re-en. Sec. 3525, R. C. M. 1921.

Definition of Working Place

The "working place," within the meaning of the above section, of a miner engaged in loading coal, was the place where he was about to load the coal previously blasted down by him, and not the place in the tunnel where the accident occurred. *McInness v. Republic Coal Co.*, 49 M 112, 115 et seq., 140 P 235; *Kallio v. Northwestern Improvement Co.*, 47 M 314, 132 P 419.

Operation and Effect

A positive duty is imposed upon the employee to examine and keep in a safe condition his working place, or in the event of his inability to do so, to cease operations and report to the employer, and in the event of his absence to observe this statutory duty, recovery cannot be had for injuries sustained, where no examination was made prior to commencing work, though the employer had failed to discharge its duty in keeping the place safe, since both were in *pari delicto*. *Kallio v. Northwestern Improvement Co.*, 47 M 314, 323, 132 P 419; *McInness v. Republic Coal Co.*, 49 M 112, 115, 140 P 235.

3526. Duties of machine-men. Machine runners and helpers shall use care while operating mining machines. They shall not operate a machine unless the shields are in place, and shall warn all persons not engaged in the operating of a machine of the danger in going near a machine while in operation, and shall not permit such persons to remain near the machine while in operation. They shall examine the roof of the working place and see that it is safe before starting to operate the machinery. They shall not move the machine while the cutter-chain is in motion.

When connecting the power cable to electric wires, they shall make the negative or grounded connections before connecting to the positive, and, when disconnecting the power cable, shall disconnect from the positive line before disconnecting the negative, or grounded. When positive feed wires extend into rooms, they shall connect such wires to the positive wire on the entry before connecting the power cable, and as soon as the power cable is disconnected shall disconnect such wire from the wire on the entry. They shall use care that the cable does not come in contact with metallic rails of the track, and shall avoid, where possible, leaving the cable in water. If any machine-men remove props which have been placed by the miner for the security of the roof, they shall reset such props as promptly as possible.

History: En. Sec. 84, Ch. 120, L. 1911; re-en. Sec. 3526, R. C. M. 1921.

3527. Duties of motormen, trip riders, and drivers. Motormen and trip riders shall use care in handling the motors and cars, and shall see that signals or markers, as provided for, are used as provided, and shall be governed by the speed provided for in this act in handling cars. They

shall not run the motors with the trolley ahead of the motors, except in case where they cannot do the alternative, and then only at a speed of two miles an hour. They shall warn persons forbidden to ride on the motors or cars, and shall not permit such persons to ride on motors or cars contrary to the provisions of this act.

Drivers shall use care in handling cars, especially when going down extreme grades and at junction points.

Motormen, trip riders, and drivers in charge of hauling trips, passing through doors used as a means of directing the ventilation, shall see that such doors are closed promptly after the trip passes through.

History: En. Sec. 85, Ch. 120, L. 1911; re-en. Sec. 3527, R. C. M. 1921.

3528. Duties of other employees. No person shall enter a mine generating fire-damp so as to be detected by a safety-lamp until the mine examiners make a report on the blackboard for that purpose, as hereinbefore provided for in this act.

No person, unless accompanied by the mine examiner, shall go beyond a danger-signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. Any person, being ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation, shall not re-enter the mine until given permission to do so by the mine foreman.

No person other than the mine examiner shall remove any caution board or danger-signal placed at the entrance to any working place, or at the entrance to any old workings in a mine.

No person shall erase or change a mark of reference or monument made in connection with a measurement; change marks or dates or any caution board, or erase or change the dates at room or entry face, when made by the mine examiner; change the checks on cars, wrongfully check a car, or do any act with intent to defraud. No person shall take a lighted pipe or other thing containing fire, except lanterns as provided for in this act, into any underground stable or barn.

No person shall place refuse in or obstruct any airway or break-through used as an airway. No workman or other person shall injure a water-gauge, barometer, air-course, brattice equipment, machinery, or livestock; obstruct or throw open any airway; handle or disturb any part of the machinery of the hoisting-engine of a mine; open a door of a mine and neglect to close it; endanger the miners or those working therein; disobey an order given in pursuance of law, or do a wilful act whereby the lives and health of persons working therein or the security of a mine or machinery connected therewith may be endangered.

History: En. Sec. 86, Ch. 120, L. 1911; re-en. Sec. 3528, R. C. M. 1921.

3529. Persons permitted to ride on haulage trips. No person or persons, except those in charge of trips, superintendents, mine foremen, mine examiners, electricians, mechanics, and blacksmiths, when required by their duty, shall ride on haulage trips, except where by mutual agreement in writing between the superintendent or agent and the employees a special trip of empty cars is run for the purpose of taking employees into or out

of the mine, or empty cars are attached to loaded trips, which shall not be run at a speed exceeding six miles per hour.

History: En. Sec. 87, Ch. 120, L. 1911; re-en. Sec. 3529, R. C. M. 1921.

3530. Employees shall not loiter around mines—intoxication or possession of intoxicants forbidden. Each employee of a mine shall go to or from his place of duty by the traveling ways provided; shall not travel around the mine or the buildings, where duty does not require, and when not on duty shall not loiter at, in, or around the mine, the buildings, or machinery connected therewith, except by permission of the owner, lessee, operator, superintendent, or foreman.

No person shall go into or around a mine, the buildings, or the machinery connected therewith, while under the influence of intoxicants. No person shall use, carry, or have in his possession, at, in, or around a mine, the buildings, or the machinery connected therewith, any intoxicants.

History: En. Sec. 88, Ch. 120, L. 1911; re-en. Sec. 3530, R. C. M. 1921.

3531. Top and bottom men. At every shaft, operated by steam or other power, the operator must station at the top and the bottom of such shaft a competent man, charged with the duty of attending to signals, preserving order, and enforcing rules, during the carriage of the men on cages.

History: En. Sec. 89, Ch. 120, L. 1911; re-en. Sec. 3531, R. C. M. 1921.

3532. Lights on landings. Whenever the hoisting or lowering of men occurs before daylight or after dark, or when the landing at which men leave or take the cage, car, or cars is at all obscured by steam or otherwise, there must always be maintained at such landing a light sufficient to show the landing and surrounding objects distinctly. Lights shall also be maintained at each landing and the bottom of all shafts while men are at work underground.

History: En. Sec. 90, Ch. 120, L. 1911; re-en. Sec. 3532, R. C. M. 1921.

3533. Regulations for hoisting or lowering of men. Cages in shafts, or cars in any slope, on which men are riding, shall not be lifted or lowered at a rate of speed greater than six hundred feet per minute.

No more than twelve persons shall ride on any cage or car at any one time, except where especially constructed man-cars are used on a slope.

No person shall carry any explosives, tools, timber, or other material with him on a cage, car, or cars in motion, in any shaft or any slope or incline plane while the men are being hoisted or lowered, except for use in repairing the shaft, slope, or incline plane.

No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials, unless the same is provided with some device by which the platform can be securely locked, and unless it is so locked whenever men or materials are being conveyed thereon.

The rope-rider on any slope or incline plane shall, during working hours, see that all ropes and signals are in perfect working order, and, if he perceives anything wrong, he shall at once report the same to the mine foreman or his assistant.

He must be cautious when men are being hoisted out of or lowered into any slope, and shall see that all safety appliances are properly attached,

and that all cars are securely coupled. He shall pay strict attention to all signals.

When more than twelve persons get on a cage or on one car on a slope or incline plane, except as above provided for, the bottomman, topman, or rope-rider in charge of the lowering and hoisting of such persons shall order a sufficient number to get off to reduce the number to twelve persons on the cage or car, and the person or persons so ordered shall immediately comply.

The car or cars used to hoist or lower men into or out of any slope or on any plane shall be connected by safety-chains, or some safety appliance must be used to maintain the trip in case of breakage of coupling or other connection.

History: En. Sec. 91, Ch. 120, L. 1911; re-en. Sec. 3533, R. C. M. 1921.

3534. Rights of men to come out. Whenever men who have finished their day's work, or who have been prevented from further work for any cause, shall come to the bottom of any shaft to be hoisted out, a cage shall be given them for that purpose, unless there is an available exit by slope or stairway in an escapement shaft, and providing there is no coal at the bottom to be hoisted. Whenever the designated number of persons for a cage load shall arrive at the bottom of the shaft in which persons are regularly hoisted or lowered, they shall be furnished with an empty cage and be hoisted.

History: En. Sec. 92, Ch. 120, L. 1911; re-en. Sec. 3534, R. C. M. 1921.

3535. Stretchers, blankets, bandages, oil, ambulance to be provided. At every mine where men are employed underground, it shall be the duty of the operator thereof to keep always on hand and at some readily accessible place, a properly constructed stretcher, a woolen and water-proof blanket, and roll of bandages, in good condition and ready for immediate use, for binding, covering and carrying anyone who may be injured at the mine; also to provide a comfortable apartment near the mouth of the mine in which anyone so injured may rest while awaiting transportation home, and to provide for the speedy transportation of anyone injured in such mine to his home. When more than one hundred and fifty men are employed in any one mine two stretchers, two woolen and two water-proof blankets, with a corresponding supply of bandages, shall be provided and kept on hand. There shall also be provided and kept in store a suitable supply of linseed or olive oil, for use in case men are burned by an explosion or otherwise. There shall also be provided at any mine where more than five hundred men are employed an ambulance of standard make or kind to be used for the purpose of transporting sick or injured workmen from the mine to the hospital or home of such sick or injured workmen; provided, however, that mines employing less than five hundred men may jointly, when located within a radius of six miles of each other, provide an ambulance as provided in this section for the joint service of such mines, which ambulance shall be kept at the mine or garage that is most centrally or conveniently located for the service of the joint users.

History: En. Sec. 93, Ch. 120, L. 1911; amd. Sec. 1, Ch. 185, L. 1921; re-en. Sec. 3535, R. C. M. 1921.

3536. Oils to be used in coal mines. No person, firm, or corporation shall compound, sell, or offer for sale, for illuminating purposes in any coal mine, any oil, other than oil composed of not less than eighty-four per cent. of pure animal or vegetable oil, or both, and not more than sixteen per cent. pure mineral oil. The gravity of such animal or vegetable oil shall not be less than twenty-one and one-half and not more than twenty-two and one-half degrees Baume scale measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit; the gravity of such mineral oil shall not be less than thirty-four and not more than thirty-six degrees Baume scale, measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit, and gravity of the mixture shall not exceed twenty-four degrees Baume scale, measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit. It is provided, however, that any material that is as free from smoke and bad odor, and of equal merit as an illuminant as a pure animal or vegetable oil, may be used at the pleasure of mine operators and miners.

Each person, firm, or corporation compounding oil for illuminating purposes in a coal mine or mines, shall, before shipment thereof is made, securely brand, stencil, or paste upon the head of such barrel or package, a label which shall have plainly printed, marked, or written thereon the name and address of the person, firm, or corporation compounding the oil therein contained, the name and address of the person, firm, or corporation having purchased same, the date of shipment, the percentage and gravity in degrees Baume scale, at a temperature of sixty degrees Fahrenheit, of each of the component parts of animal, vegetable, and mineral oil contained in the mixture, and the gravity in degrees Baume scale of the mixture, at a temperature of sixty degrees Fahrenheit.

Each label shall have printed thereon, over the facsimile signature of the person, firm, or corporation having compounded the oil, the following: "This package contains oil for illuminating purposes in coal mines in the state of Montana, and the composition thereof as shown herein is correct."

No person, firm, or corporation shall sell or offer for sale any oil for illuminating purposes in any coal mine, unless the barrel or package in which such oil was received bears the label of the compounder as provided for in this act.

Each person, firm, or corporation selling or offering for sale any oil for illuminating purposes in any coal mine, shall, upon request of the state-coal-mine inspector, or of any officer or duly authorized agent of any owner or lessee of a coal mine located within five miles of the point where such oil is offered for sale, or of any coal-miner, submit such oil for examination, and upon request give a sample of such oil from one or more original containers selected by such inspector, officer, agent, or miner for the purpose of making a test thereof.

No person shall adulterate any oil, either before or after taking same from original containers, and shall not alter, transfer, or reuse any label placed upon any container.

No person shall use for illuminating purposes in any coal mine any oil other than oil specifically provided for in this act. Each person while in a coal mine shall, upon the request of the inspector of mines, or any officer or duly authorized agent of the owner or lessees, submit his lamp and supply of oil for examination, and upon request give sample of oil for purpose of making test thereof, and state from whom purchased.

The provisions of this act relating to compounding, sale, and use of oil for illuminating purposes in coal mines shall apply to oil used in lamps for open lights only, but do not apply to drivers, rope-riders, or motormen while acting in such capacity. The oil used in safety-lamps may be of such composition as will best serve the purpose.

History: En. Sec. 94, Ch. 120, L. 1911; re-en. Sec. 3536, R. C. M. 1921.

3537. Boundary lines. In no case shall the workings of a coal mine be driven nearer than ten feet to the boundary line of the coal rights pertaining to said mine, except for the purpose of establishing connecting workings between properties owned by the same person, or an underground communication between contiguous mines as provided for elsewhere in this act.

History: En. Sec. 95, Ch. 120, L. 1911; re-en. Sec. 3537, R. C. M. 1921.

3538. Notice to inspectors. Immediate notice must be conveyed to the state coal-mine inspector by the operator interested.

First. Whenever an accident occurs whereby any person receives serious or fatal injury.

Second. Whenever work is commenced to sink a shaft, slope, or drift, either for hoisting or escapement purposes.

Third. Whenever it is intended to abandon any mine or to reopen any abandoned mine.

Fourth. Upon the appearance of any large body of fire-damp in mine, whether accompanied by explosion or not, and upon the occurrence of any serious fire within the mine or on the surface around the mine.

Fifth. When the workings of any mine are approaching near any abandoned mine believed to contain accumulation of water or gas.

Sixth. Upon the accidental closing or intended abandonment of any regularly established passageway to an escapement outlet.

History: En. Sec. 96, Ch. 120, L. 1911; re-en. Sec. 3538, R. C. M. 1921.

3539. Duty of inspectors. When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the state coal-mine inspector shall, if he deem it necessary from the facts reported, and in all cases of loss of life, immediately go to the scene of said accident, or send some competent person authorized by him. It shall, moreover, be the duty of every operator of a coal mine, or his agent, to make and preserve for the information of the inspector, upon uniform blanks furnished by the said inspector, a record of all injuries sustained by any employees in the pursuance of their regular occupation.

The state coal-mine inspector may also make any original or supplementary investigation which he may deem necessary as to the nature and cause of any accident within his jurisdiction, and shall make a record of

the circumstances attending the same and of the result of his investigations for preservation in the files of his office.

To enable him to make such investigation, he shall have the power to compel the attendance of the witnesses and to administer oaths or affirmations to them, and the cost of such investigation shall be paid by the county in which such accident has occurred, in the same manner as the cost of coroner's inquest is paid.

History: En. Sec. 97, Ch. 120, L. 1911; re-en. Sec. 3539, R. C. M. 1921.

3540. Coroner's inquest. If any person is killed by any explosion or other accident, the operator must also notify the coroner of the county, his authorized deputy, or, in the absence of either or in the inability of either to act, any justice of the peace of said county, for the purpose of holding an inquest concerning the cause of such death. At such inquest the state coal-mine inspector, his deputy or authorized representative, shall offer such testimony as he may be possessed of, and he may question or cross-question any witness appearing in the case; and the owner, agent, or manager of the coal mine, either in person or by counsel, shall also be at liberty to examine or cross-examine any witness at any such inquest.

Any person having personal interest in or employed in the management of the mine in which the accident occurred shall not be qualified to serve on the jury impaneled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such to be sworn or sit on the jury; nevertheless, when possible, one-third of the jurymen shall be miners.

Unless the state coal-mine inspector, or some person authorized by him, is present at an inquest held upon the body of any person, where death may have been caused by any such accident, the coroner shall adjourn the same, and, by written notice or telegram delivered or sent to the state coal-mine inspector, at least two days before holding the adjourned inquest, give notice of the time and place of the holding of the same. Before such adjournment the coroner, his authorized deputy, or the justice of the peace, may take evidence to identify the body and order the interment thereof.

History: En. Sec. 98, Ch. 120, L. 1911; re-en. Sec. 3540, R. C. M. 1921.

3541. Code of signals at coal mines. At any coal mine operated by shaft more than one hundred feet in depth, or by slope, the manner of signaling to and from the bottomman, the topman, the rope-riders, and the engineer shall consist of wires, or a tube or tubes, through which signals shall be communicated by electricity, compressed air, or other pneumatic devices.

The following signals are provided for use at coal mines where signals are required:

One ring or whistle—One ring or whistle shall signify to hoist coal or the empty cars or cage, and also to stop either when in motion.

Two rings or whistles—Two rings or whistles shall signify to lower cage or car.

Three rings or whistles—Three rings or whistles shall signify that men are coming up; when return signal is received from engineer, either by

bell, whistle, or slight movement of the trip, men will get on cage or cars and the cager or rope-rider shall ring or whistle "one" to start.

Four rings or whistles—Four rings or whistles shall signify to hoist slowly, implying danger.

Five rings or whistles—five rings or whistles shall signify accident in the mine and call for stretchers.

From top to bottom—One ring or whistle shall signify—All ready, get on cage or cars.

From top to bottom—Two rings or whistles shall signify—To send away empty cage or cars.

Provided, that the management of any mine may, with the consent of the state coal-mine inspector, add to or change this code of signals at their discretion, for the purpose of increasing its efficiency or of promoting the safety of the men in said mine, but, whatever code may be established and in use at any mine, it must be approved by the state coal-mine inspector, and shall be conspicuously posted at the top and at the bottom of every shaft or slope, and at the landing-place on all rope-haulage systems, also in all engine-rooms, for the information and instruction of all persons. In any coal mine where more than fifty men are employed underground, one or more telephones shall be installed communicating with the surface.

History: En. Sec. 99, Ch. 120, L. 1911; re-en. Sec. 3541, R. C. M. 1921.

3542. Duties of hoisting engineers. The hoisting engineer on any shaft, slope, or drift at any mine shall be in constant attendance at his engine during working hours when there are workmen underground. He shall not permit anyone to enter or to loiter in the engine-room except those authorized by their positions or duties to do so, and he shall hold no conversation with any officer of the company or other person, or leave his engine while in motion, or while his attention is occupied with the signals. A notice to this effect shall be posted on the door of the engine-house.

The hoisting engineer must thoroughly understand the established code of signals, and such signals must be delivered in the engine-room in a clear and unmistakable manner, and he shall not recognize any signals other than those provided for in this act, or such as have been approved by the state coal-mine inspector; and when he has the signal that men are on the cage, car or cars, he must work his engine only at the rate of speed herein provided for by this act. He shall permit no one to handle or meddle with any machinery under his charge, nor suffer anyone who is not a certified engineer to operate his engine except for the purpose of learning to operate it or repair same, and then only in the presence of the engineer in charge, and when men are not on the cages, car, or cars.

History: En. Sec. 100, Ch. 120, L. 1911; re-en. Sec. 3542, R. C. M. 1921.

3543. Qualifications of miners. Each person desiring to work by himself at mining or loading shall first produce satisfactory evidence, in writing, to the mine foreman of the mine in which he is employed, or to be employed, that he has worked at least nine months with, under the direction of, or as a practical miner; provided, however, that if the mine in which such person is to be employed generates explosive gas or fire-damp, he shall have

worked not less than twelve months with, under the direction of, or as a practical miner. Until a person has so satisfied the mine foreman of his competency, he shall not work or be permitted to work at mining or loading unless accompanied by a miner holding the foregoing qualifications.

History: En. Sec. 101, Ch. 120, L. 1911; re-en. Sec. 3543, R. C. M. 1921.

3544. Operators must make reply to statistical inquiry. Every coal-mine operator, whether person, copartnership, or corporation, shall, within thirty days after receipt of blanks from the state coal-mine inspector asking for statistical data relative to any coal mine operated by the person, copartnership, or corporation addressed, fill in the blanks of such forms, answering all interrogations correctly and mail the same to the state coal-mine inspector.

History: En. Sec. 102, Ch. 120, L. 1911; re-en. Sec. 3544, R. C. M. 1921.

3545. Penalties. If any operator, company, or corporation neglects to comply with or violates the requirements of this act, either in part or in whole, or if any owner, operator, manager, superintendent, mine foreman, or his assistant coerces, intimidates, or causes any employee to do the things prohibited, or causes them to do as provided against in this act, such operator, company, corporation, manager, superintendent, mine foreman, or his assistant shall be liable to a penalty of twenty-five dollars for each and every day during which the offense continues; proceedings to be instituted in any court of competent jurisdiction in the county in which such offense is committed.

In case of the failure of any operator, company, or corporation to comply with the provisions in this act in relation to the sinking of escapement shaft or the ventilation of mines, the state coal-mine inspector, through the county attorney for the county in which such failure occurs, or through any other attorney in case the county attorney fails to act promptly, shall proceed against such operator by injunction, without bond, to restrain him from continuing to operate such portion of the mine until all legal requirements have been complied with.

When the state coal-mine inspector shall discover that any section of this act, or any part thereof, is being neglected or violated, he shall order immediate compliance therewith, and in case of continued failure to comply shall, through the county attorney or any other attorney in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith through the penalties herein prescribed.

If it becomes necessary, through refusal or failure of the county attorney to act, for any other attorney to appear for the state in any suit involving the enforcement of any of the provisions of this act, reasonable fees for the services of such attorney shall be allowed by the county commissioners in and for the county in which such proceedings are instituted.

Any employee engaged at work in or around any coal mine in the state of Montana, or any other person, who violates any part of this act, shall for each offense be liable to a penalty not exceeding five dollars, or in default of payment shall be imprisoned in the county jail for a period of time not exceeding ten days, proceedings to be instituted in any court of competent jurisdiction in the county in which such offense is committed.

Any person, firm, or corporation who compounds, sells, or offers for sale to dealers any oil for illuminating purposes in any coal mine in this state, contrary to the provisions of section 3539 of this code, shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars, and for the second offense, or any subsequent offense, shall be fined not less than one hundred dollars, or imprisonment not less than thirty days nor more than sixty days, or both, at the discretion of the court; proceedings to be instituted in any court of competent jurisdiction.

Any person, firm, or corporation who sells, or offers for sale, to any employee of a coal mine any oil for illuminating purposes in a mine contrary to the provisions of section 3539 of this code shall, upon conviction thereof, be fined not less than twenty-five dollars or more than fifty dollars, and for a second or subsequent offense shall be fined not less than twenty-five dollars and not more than fifty dollars, or imprisonment not less than ten days and not more than twenty days, or both, at the discretion of the court; proceedings to be instituted in any court of competent jurisdiction.

History: En. Sec. 103, Ch. 120, L. 1911; re-en. Sec. 3545, R. C. M. 1921.

120, laws of 1911, in *Kallio v. Northwestern Improvement Co.*, 47 M 314, 322, 132 P 419.

References

Cited or applied as section 103, chapter

3546.—Definitions. In this act the words “mine” and “coal mine,” used in their general sense, are intended to signify any and all under-ground parts of the property of a mining plant which contribute, directly or indirectly, under one management, to the mining or handling of coal.

The words “excavations” and “workings” signify any and all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working place, whether abandoned or in use.

The term “shaft” means any vertical opening through the strata which is or may be used for the purpose of ventilation or escapement, or for hoisting or lowering of men or material in connection with the mining of coal.

The terms “slope” and “drift” mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

A “following shot” is a shot which is dependent in its action on the result of another shot.

The term “operator,” as applied to the party in control of a mine under this act, signifies the person, firm, or body corporate who is the immediate proprietor as owner or lessee of the plant, and, as such, responsible for the condition and management thereof.

The “mine foreman” is a person who is charged with the general direction of the underground work, or both the underground work and the outside work of any coal mine, and who is commonly known and designated as “mine boss.”

The “mine examiner” is the person charged with the examination of the condition of the mine before the miners are permitted to enter it, and who is commonly known as the “fire-boss.”

History: En. Sec. 104, Ch. 120, L. 1911; re-en. Sec. 3546, R. C. M. 1921.

CHAPTER 303

REGULATIONS FOR SALE AND MARKETING OF COAL

- Section 3546.1. Regulations concerning bills and invoices.
3546.2. Dealers' duties concerning bills and invoices.
3546.3. Weight of coal—substitution of kind.
3546.4. Copies of bills and invoices to be kept for inspection.
3546.5. Penalty for violations.
3546.6. Enforcement of act.

3546.1. Regulations concerning bills and invoices. Any person, firm or corporation engaged in mining, producing or shipping of coal within the state of Montana, shall accurately bill and invoice the same, plainly indicating on all bills or invoices therefor the place where the same was mined, the person, firm or corporation by whom the same was mined and the trade name or mark, if any, thereof.

History: En. Sec. 1, Ch. 104, L. 1927.

3546.2. Dealers' duties concerning bills and invoices. Any person, firm, or corporation wholesaling, jobbing, exchanging, offering for sale, or selling at retail, any coal within the state of Montana shall accurately bill and invoice the same to the person, firm or corporation purchasing or receiving the same and shall plainly indicate on all statements, bills or invoices, therefor, the name of the coal, the name of the person, firm or corporation producing the same, the place where mined and the trade name or trade mark, if any, thereof.

History: En. Sec. 2, Ch. 104, L. 1927.

3546.3. Weight of coal—substitution of kind. In the sales of coal within the state of Montana, the seller must give to the purchaser full weight at the rate of two thousand (2,000) pounds per ton, and no person, firm or corporation shall deliver to any customer any coal in substitution for the kind, brand or character of coal ordered by the customer except upon the express written order, direction or approval of the purchaser.

History: En. Sec. 3, Ch. 104, L. 1927.

3546.4. Copies of bills and invoices to be kept for inspection. Any person, firm, or corporation, mining, shipping, or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal within the state of Montana, shall keep within the state of Montana, a true, accurate and complete copy of all the original statements, bills and invoices of all coal produced, shipped, marketed, exchanged or sold for at least one (1) year; and all papers, records and files of any person, firm or corporation transporting, producing, shipping, exchanging or selling any coal within the state of Montana shall, at all times, be open to inspection by the attorney general, the county attorneys and the state sealer of weights and measures for the purposes of enforcing this act.

History: En. Sec. 4, Ch. 104, L. 1927.

3546.5. Penalty for violations. Every person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00),

or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Any person, firm or corporation convicted of a second violation of any of the provisions of this act shall be punished as above provided, and the license of any retail coal dealer shall, thereby, be automatically revoked, and it shall be unlawful for any person, firm or corporation, so convicted, thereafter to engage in said retail business, either directly or indirectly, for a period of six (6) months next after such second conviction.

History: En. Sec. 5, Ch. 104, L. 1927.

3546.6. Enforcement of act. It shall be the duty of the state sealer of weights and measures to enforce the provisions of this act and the duty of the attorney general and the county attorneys of the counties of the state to prosecute all cases arising under the provisions hereof.

History: En. Sec. 6, Ch. 104, L. 1927.

CHAPTER 304

HOURS OF LABOR IN STRIP MINING

Section 3546.7. Strip mining defined.

3546.8. Hours of labor in strip mining.

3546.9. Penalty for violations.

3546.7. Strip mining defined. That for the purpose of this act "strip mining", is defined as the removal of the over burden, and coal or other materials from the ground, and all of the operations pertaining thereto, without the necessity of providing timbers for the holding of said ground in place.

History: En. Sec. 1, Ch. 76, L. 1933.

3546.8. Hours of labor in strip mining. A period of not more than eight (8) hours will constitute a day's labor of all employees working in "strip mining" except in cases of emergencies for the protection of life or property when same is in danger.

History: En. Sec. 2, Ch. 76, L. 1933.

3546.9. Penalty for violations. Any person, company, corporation, or lessee of the same, who shall violate the provision of this act, shall, upon conviction be punished by a fine of not less than fifty dollars (\$50.00), or more than six hundred (\$600), or by imprisonment of not less than thirty (30) days or more than seven (7) months, or both such fine and imprisonment and each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this act shall be considered separate and distinct offense and shall be punished as such.

History: En. Sec. 3, Ch. 76, L. 1933.

3547-3548. Repealed—Chapter 56, laws of 1925.

3549. Repealed—Chapter 163, laws of 1935.

3550-3552. Omitted as unconstitutional, see Gas Products Co. v. Rankin 63 M 372, 207 P 993.

CHAPTER 305

CONSERVATION OF OIL AND NATURAL GAS—OIL CONSERVATION BOARD

Section 3552.1. Regulation of oil and gas wells to prevent waste.

3552.2. Aid from bureau of mines—measures to be enforced without cost to state.

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- 3552.4. Oil and gas wells not to be construed to be public utilities.
- 3554.1. Waste of crude petroleum unlawful.
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3552.1. Regulation of oil and gas wells to prevent waste. For the purpose of conserving the natural resources of the state and to prevent waste thereof through negligent methods of operation, the board of railroad commissioners of the state of Montana shall prescribe and enforce rules and regulations governing the drilling, casing, and abandonment of oil and gas wells and the waste of oil and gas therefrom upon all lands in the state of Montana excepting public lands subject to the act of Congress approved February 25, 1920 (public 146). The rules and regulations so prescribed shall be those from time to time adopted by the bureau of mines or by the secretary of the interior of the United States pursuant to said act of Congress, governing methods of operations of operators upon lands embraced within permits or leases issued under the provisions of said act of Congress, and it shall be the duty of all persons and corporations drilling or operating oil or gas wells upon patented or state land to comply with the said rules and regulations, to file with the board of railroad commissioners of the state of Montana, all logs of wells and other reports required thereby, and to case, control and plug all wells as therein prescribed.

When the rules and regulations aforesaid are duly adopted by and promulgated by said board of railroad commissioners, the same shall be and all amendments and supplements thereto, made in the first instance by the said bureau of mines, and thereafter adopted by and promulgated by the said board of railroad commissioners, shall be the rules and regulations of and by the authority of the state of Montana, acting through said board of railroad commissioners.

History: En. Sec. 1, Ch. 56, L. 1925.

3552.2. Aid from bureau of mines—measures to be enforced without cost to state—commission engineers not to receive extra compensation. The board of railroad commissioners may, from time to time, request the aid and assistance of a qualified representative of the bureau of mines of the United States to supervise the abandonment of wells or the extinguishment of fires, and it may, from time to time request the field superintendent of any com-

pany or any operator, operating in the same field to aid in the supervision of the abandonment of wells or the extinguishment of fires and in taking effective measures properly to accomplish said purposes, but no such persons shall receive from the state of Montana any compensation for or on account of such services. This act shall be administered by said board of railroad commissioners by and through its engineer or engineers, and its inspector or inspectors, without any cost and expense to the state of Montana in addition to the regular biennial appropriation made for said board and its ex-officio commissions.

History: En. Sec. 2, Ch. 56, L. 1925.

3552.3. Penalty for violation of provisions. Any person or corporation violating the provisions of this act, or rules and regulations prescribed pursuant hereto, or the lawful orders of the board of railroad commissioners under said rules and regulations shall, upon conviction be fined not more than five hundred dollars or imprisoned not more than six months.

History: En. Sec. 3, Ch. 56, L. 1925.

3552.4. Oil and gas wells not to be construed to be public utilities. That nothing herein contained shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

History: En. Sec. 4, Ch. 56, L. 1925.

3553-3554. Repealed—Chapter 56, laws of 1925.

3554.1. Waste of crude petroleum unlawful. The production of crude petroleum in the state of Montana in such manner, under such conditions and in such amounts as to constitute or result in waste is hereby declared to be opposed to the public interest and is hereby prohibited.

History: En. Sec. 1, Ch. 18, Ex. L. 1933.

3554.2. Oil conservation board—composition—term of office—vacancies. There is hereby created and established an oil conservation board of the state of Montana to be known as "oil conservation board of the state of Montana"; said board shall consist of five (5) members to be appointed by the governor, but may be removed by him at any time. They shall serve for two (2) years and until their successors are appointed and qualified; provided, however, that any vacancy shall be filled by appointment in the manner prescribed by the constitution.

History: En. Sec. 2, Ch. 18, Ex. L. 1933; amd. Sec. 1, Ch. 136, L. 1935.

3554.3. Qualifications of board members. The persons appointed as members of such board shall have been bona fide residents of the state of Montana for at least one (1) year before such appointment, and four (4) of whom shall be engaged in the production of crude petroleum within the state of Montana.

History: En. Sec. 3, Ch. 18, Ex. L. 1933.

3554.4. Meeting of board and selection of chairman—expenses. The members of said conservation board first appointed shall without delay meet and organize and elect one (1) of their members as chairman. A majority of said board shall constitute a quorum. The members of the conser-

vation board shall receive no compensation for their services but shall be allowed their several expenses incurred in the discharge of their duties.

History: En. Sec. 4, Ch. 18, Ex. L. 1933.

3554.5. Office of board—time and place of meetings. The board may keep its office at the state capitol or at any place in the state of Montana by it deemed best located for the performance of the duties imposed upon it by the provisions of this act.

Meetings of said conservation board shall be at the call of the chairman at any time and place he may designate. The board may hold sessions or conduct hearings and investigate at any place it deems necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 5, Ch. 18, Ex. L. 1933.

3554.6. Employment of secretary and other help—limitation on expenditures—duties of secretary. The said board may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such board shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of section 3554.14.

The secretary shall keep full and correct minutes of the transactions and proceedings of said board and be the custodian of its records and files and preserve at the office of the board all books, maps, and other documents entrusted to his care. He shall have authority to administer oaths and perform such other duties as may be required of him.

History: En. Sec. 6, Ch. 18, Ex. L. 1933.

3554.7. Seal of board—judicial notice. The board shall have a seal and such seal shall have the following words engraved thereon: "Oil Conservation Board of the State of Montana," and said seal shall be affixed to all writs, authentication of records or other proceedings. The courts of this state shall take judicial notice of such seal.

History: En. Sec. 7, Ch. 18, Ex. L. 1933.

3554.8. Oath to be taken by board members. Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office shall take and subscribe the oath specified in section 1, article 19, of the Constitution of the state of Montana and such oaths shall be filed in the office of the secretary of state.

History: En. Sec. 8, Ch. 18, Ex. L. 1933.

3554.9. Powers and duties of board. The conservation board shall have general power and it shall be its duty:

1. To have general control, regulation and supervision of the production, transportation and storage of crude petroleum within the state of Montana.
2. To make and prescribe rules and regulations, not inconsistent with the constitution and laws of the state of Montana, which shall govern the operation of wells for the production of crude petroleum and the conservation thereof and the transportation and storage of crude petroleum within

the state of Montana for the effectual carrying out of any and all laws, regulations and orders with regard to crude petroleum production, transportation and storage made by the United States government, or by the department of the interior of the United States of America, by the national recovery administration of the United States government, or by the authorities administering the code of fair competition for the petroleum industry and/or any amendments thereof or any revision or modification thereof.

3. To determine and prescribe what producing wells shall be defined as "stripper wells," and to make such orders as in its judgment shall be required to protect said wells, and to provide that such wells may be produced to capacity if it is deemed necessary in the interest of conservation so to do, notwithstanding allocation or restriction of production of other wells.

4. To require each and every producer, transporter, dealer in and/or storer of crude petroleum within the state to furnish monthly, at least, and oftener if required by the board, any and all information and reports to said board on such forms as it may prescribe and within the time specified by the board, regarding any and all of the activities of such producer, transporter, dealer in and/or storer with respect to his said operations.

5. To act as a regulatory board or agency for any allocation and regulation of crude petroleum production and/or storage within the state of Montana under and in accordance with the terms and provisions of the Code of Fair Competition for the Petroleum Industry or any amendments or revision thereof, and to have full power and authority to carry out the provisions of said code and to provide for the conforming thereto of all producers, transporters, dealers in and/or storers of crude petroleum within the state of Montana.

History: En. Sec. 9, Ch. 18, Ex. L. 1933.

3554.10. Statements may be required concerning production, storage and transportation of crude petroleum. Said board shall have the right to require any producer or producers of such crude petroleum, or any operators of any drilling or producing well or wells, to make and file sworn statements of production of or facts concerning any well or wells under their control, whenever and as often and for such periods as it may specify, and such well or wells may be inspected by said board and/or its representatives or agents, measured, tested and/or gauged and/or the production therefrom gauged in such manner and under such rules and regulations as may be prescribed by said board.

Said board shall likewise have the power to require owners and/or operators of any storage and/or transportation facilities of crude petroleum in this state to make and file such sworn statements regarding the same and quantity and quality of the crude petroleum in storage and/or transportation of crude petroleum in such manner and to such extent and at such time as shall be prescribed by said board by rules and regulations or by specific order in the performance of its duties under this act.

History: En. Sec. 10, Ch. 18, Ex. L. 1933.

3554.11. Complaint of violations—hearings—notice—power of board and representatives to investigate. Upon complaint of the oil conservation

board, or upon the verified complaint of any producer of crude petroleum in this state, if it shall appear to satisfaction of said board, that waste as defined by the code of fair competition or any amendment thereto and/or revision thereof of crude petroleum, is being committed in this state, or that any rules, regulation or order of the board is being violated, it shall hold a hearing in each of the counties in which it is alleged that such waste is being committed, or that such violation is occurring, to determine whether or not such, or any, waste or violation is being committed. At least five (5) days prior to the date of said hearing the board shall cause notice of the time and place of said hearing to be published in a newspaper of general circulation printed and published in each county in which it is alleged that waste is being committed, or that such rules, regulations, or notice is being violated, or notice may be given by posting for at least five (5) days before such hearing in at least three (3) conspicuous places in each field or locality in which it is alleged that such waste or violation is being committed; provided, however, that in lieu of notice by posting or by publication, personal service of such notice upon any person, firm, or corporation, at least five (5) days prior to the date of said hearing, shall be sufficient notice of such hearing to such person, firm, or corporation. Each member of the oil conservation board and each representative of such board appointed and designated may make investigations, conduct hearings and take testimony at any hearing provided for herein, and shall have power to administer oaths, take affidavits and issue subpoenas for the attendance of witnesses at such hearing.

History: En. Sec. 11, Ch. 18, Ex. L. 1933.

3554.12. Order of board for violator to desist from violations. If, upon the hearing, the board finds that waste is being committed, and/or that any rule, regulation, or order of the board, or the authorities administering the code of fair competition or any amendments thereto or revisions thereof, in regard to the production, transportation, dealing in and/or storage of crude petroleum is being violated, it shall enter its order or orders requiring the person, firm, or corporation found to be committing such waste and/or violating such rule, regulation or order to desist from the same within such time and to the extent specified in such order, or orders.

History: En. Sec. 12, Ch. 18, Ex. L. 1933.

3554.13. Compelling compliance with order. If any person, firm, corporation, or syndicate shall violate or fail to comply with any order of the board made hereunder, the said board may bring an action by complaint in equity in the name of the state of Montana against such person, firm, corporation or syndicate in the district court of any county in which any of the property covered or affected by such order is situated and/or in any county such violation is alleged to have occurred to restrain the commission of such violation or compel compliance with any such order. There may be joined in the same proceeding any number of defendants alleged to be violating the same order, although their properties and interests may be severally owned or may be situated in several counties and their actual violations of the order may be separate and distinct. In such action the court may enjoin the defendant, or defendants, from violating said order or may

find to what extent violation has been committed and enter judgment accordingly. In the event the order is determined to be invalid the court may dismiss said action without prejudice to the right and jurisdiction to conduct further hearings and make a new order in the premises by giving notice thereof as in this act provided. In any action for injunction brought hereunder no restraining order shall be issued ex-parte, but otherwise the proceedings shall be governed by the provisions of the code of civil procedure of the state of Montana, and pending appeal, no temporary or permanent injunction issued in such proceeding shall be refused or dissolved or stayed upon the giving of any bond or undertaking or otherwise.

History: En. Sec. 13, Ch. 18, Ex. L. 1933.

3554.14. Tax levy—collection of tax. There is hereby levied and assessed a privilege and license tax of three-eighths ($\frac{3}{8}$) of one cent (1c) per barrel on each and every barrel of crude petroleum produced, saved and marketed or stored within the state of Montana, during the period during which said board is in existence. Producers thereof shall pay such tax on each barrel of crude petroleum produced for themselves as well as for others, including royalty holders, and shall be reimbursed for such tax paid in crude oil produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum produced for others, as provided in chapter 161, of the session laws of the twenty-third legislative assembly of the state of Montana.

History: En. Sec. 14, Ch. 18, Ex. L. 1933.

NOTE.—Chapter 161 mentioned in this section, as later amended, is sections 2089-2090.2 of these codes.

3554.15. Statement of producer—payment of tax. Each producer of crude petroleum in the state of Montana shall, not later than the twentieth day of each calendar month, beginning with the next calendar month after this act shall become effective, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the conservation board of the state of Montana, duly signed and sworn to, of all crude petroleum produced by him in this state, during the preceding month, and containing such other information as the oil conservation board may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in section 3554.14, in an amount equal to three-eighths ($\frac{3}{8}$) of one cent (1c) per barrel for each barrel of crude petroleum produced by him within the state during the period covered by such report. Any producer carrying on business at more than one place or location in this state may include all such places of business in one statement.

History: En. Sec. 15, Ch. 18, Ex. L. 1933.

3554.16. Delinquent penalty—collection of delinquent taxes. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

Upon request of the oil conservation board it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

History: En. Sec. 16, Ch. 18, Ex. L. 1933.

3554.17. Oil conservation board fund—payments from. All money collected under the provisions of this act shall be deposited in a special fund to be known as the "oil conservation board fund" by the state treasurer of the state of Montana, and the fund to be raised shall be used for the purpose of paying all expenses of said board and for no other purpose. Upon the termination of said board any balance remaining in said fund shall be paid over to the general fund of the state. All accounts and expenditures of said board shall be certified by the said oil conservation board approved by the board of examiners, and paid by the state treasurer upon warrants drawn by the state auditor out of the oil conservation board fund.

History: En. Sec. 17, Ch. 18, Ex. L. 1933.

3554.18. Penalty for failure to file statements—forfeiture of right to do business in state. Each person, firm, co-partnership, corporation or syndicate who fails, neglects or refuses to make and file the statements required by this act in the manner and within the time required, or shall wilfully make any false statement with reference to its, or his, business or shall wilfully violate any order of said board shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding one thousand dollars (\$1,000.00), or punished by imprisonment in the county jail for not to exceed six (6) months, or by both such fine and imprisonment, and in the case of a corporation such punishment may also include forfeiture of its authorization to transact business within the state of Montana.

History: En. Sec. 18, Ch. 18, Ex. L. 1933.

3554.19. Act not to affect powers of other boards. Nothing herein contained shall be construed to derogate any powers of the board of railroad commissioners of the state of Montana or the public service commission of the state of Montana.

History: En. Sec. 20, Ch. 18, Ex. L. 1933.

CHAPTER 306

THE DEPARTMENT OF AGRICULTURE, LABOR AND INDUSTRY—REGULATION OF AGRICULTURE, HORTICULTURE, APICULTURE, POULTRY HUSBANDRY, DAIRYING, GRAIN GRADING AND INSPECTION, STATISTICAL DATA AND THE STATE FAIR.

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- 3633.12. Penalty for violations.
- 3634. Arbor day proclamation.
- 3634.1. State horticultural revolving fund—composition and use of.
- 3634.2. Reimbursement of state general fund.
- 3635. Division labor and publicity—duties.
- 3636. Maintenance employment offices by city council.
- 3637. Examination of witnesses—inspection of factories, etc.
- 3638. Statistics—preparation and publication.
- 3639. Duty public officers to furnish statistics.
- 3640. Control of state fair.
- 3641. State fair advisory board—composition, duties, and fee.
- 3642. Assistants to state fair advisory board.
- 3643. Custody of state fair property—letting of privileges.
- 3644. Location of state fair.
- 3645. Disposal of fees—revolving appropriation accounts.
- 3646. Existing departments abolished.
- 3647. Transfer special funds to general fund.
- 3648. Successor to existing departments.

- 3649. Penalty for failure to obey orders of department.
- 3649.1. Bond and license for farm produce dealers.
- 3649.2. Acts constituting misdemeanor.
- 3649.3. Report of licensees—inspection—authority of commissioner of agriculture.

3555. Department of agriculture, labor, and industry—creation. There is hereby created a department of the government of the state of Montana to be known as the “department of agriculture, labor, and industry.” The general purpose of said department is the promotion of the agricultural and labor interests of the state of Montana as hereafter more specifically provided.

History: En. Sec. 1, Ch. 216, L. 1921; re-en. Sec. 3555, R. C. M. 1921.

Operation and Effect

Held, that, in effect, there is no difference between the general provision of the constitution (sec. 7, art. VII) that the governor shall nominate and “by and with the consent of the senate” appoint all constitutional appointive officers, the provision authorizing the creation of the department of agriculture, labor and industry (sec. 1, art. XVIII) declaring that a commissioner shall be appointed by the governor “subject to the confirmation of the senate,” and the provision of the act creating the department (this section), and that the commission shall “be appointed by the governor, by and with the consent of the senate”; but that, if there be a difference, the constitution must prevail over the declaration of the legislature, and, as between the two constitutional provisions, the special (sec. 1, art.

XVIII) controls the general one (sec. 7, art. VII). State ex rel. Nagle v. Stafford et al., 97 M 275, 279, 34 P 2d 372.

Provisions Are Exclusive

Held, in a proceeding in quo warranto, that where the commissioner of agriculture, labor and industry was holding over until his successor should be appointed and qualified, and the appointment of his successor was not made until after adjournment of the legislature, preventing confirmation by the senate, there was no “vacancy” in the office as defined by section 511, the provisions of which are exclusive and do not cover a contingency such as the one presented in the instant case, to be filled by appointment, and that therefore the judgment of the district court that the claim of the appointee was without foundation was correct. State ex rel. Nagle v. Stafford et al., 97 M 275, 279, 34 P 2d 372.

3556. Commissioner of agriculture—appointment and term. The chief executive officer of the department of agriculture, labor, and industry, hereinafter referred to as the commissioner of agriculture, shall be a commissioner of agriculture, to be appointed by the governor, by and with the consent of the senate, and such commissioner shall hold office for a term of four years or until his successor is appointed and qualified.

History: En. Sec. 2, Ch. 216, L. 1921; re-en. Sec. 3556, R. C. M. 1921.

References

State ex rel. Nagle v. Stafford et al., 97 M 275, 279, 34 P 2d 372.

3557. Bond, salary, and office of commissioner. Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office, and shall give a surety company bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of five thousand dollars, payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

History: En. Sec. 3, Ch. 216, L. 1921; re-en. Sec. 3557, R. C. M. 1921.

References

State ex rel. Nagle v. Stafford, 99 M 88, 43 P 2d 636.

3558. Commissioner may prescribe regulations—seal. The commissioner of agriculture is empowered to prescribe regulations not inconsistent with law for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto. He shall also have authority to designate the form of and to use a seal to authenticate his official acts.

History: En. Sec. 4, Ch. 216, L. 1921; re-en. Sec. 3558, R. C. M. 1921.

3559. Appointment and compensation of assistants. The commissioner of agriculture shall have the authority to appoint for the performance of the work of said department such number of secretaries, assistants, clerks, and other employees as he shall deem necessary for the performance of the work of the department, subject, however, to the approval of the state board of examiners. All persons so employed shall receive the compensation fixed by law or fixed by the board or department to whom may be entrusted the power to fix the compensation of deputy state officers and employees; if not so fixed, the commissioner of agriculture shall determine the amount of said compensation. No employee of the department of agriculture, labor, and industry who is paid a fixed compensation shall receive pay for any extra services rendered by him unless expressly authorized by law.

History: En. Sec. 5, Ch. 216, L. 1921; re-en. Sec. 3559, R. C. M. 1921.

3560. Annual report. The commissioner of agriculture shall annually on or before the first day of December, and at such other times as the governor may require, make a report in writing to the governor concerning the condition, management, and financial transactions of his department.

History: En. Sec. 6, Ch. 216, L. 1921; re-en. Sec. 3560, R. C. M. 1921.

3561. Powers and duties of department. The department of agriculture, labor, and industry shall have power and it shall be its duty:

1. To encourage and promote, in every practicable manner, the interests of agriculture, including horticulture and apiculture, domestic arts, dairying, cheese making, poultry raising, the production of wool, and all other allied industries.

2. To collect and publish statistics relating to the production and marketing of crops and livestock, and of beef, pork, poultry, fish, mutton, wool, butter, cheese, and other agricultural products so far as such statistical information may be of value to the agricultural and allied interests of the state.

3. To assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture.

4. To establish and promulgate standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products.

5. To co-operate with producers and consumers in devising and maintaining economical and efficient systems of distribution, and to aid in

whatever way may be consistent or necessary in accomplishing the reduction of waste and expense incidental to marketing.

6. To have authority to maintain a market news service, including information as to crops, freight rates, commission rates, and such other matters as may be of service to producers and consumers, acting as a clearing house for information between producer and consumer.

7. To gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products.

8. To investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, dairy products, eggs, livestock, vegetables, or other farm products, to the end that the distribution of such commodities through such factors, commission merchants, and others shall be efficiently and economically accomplished without hardship, waste or fraud.

9. To co-operate with the state college of agriculture, the agricultural experiment stations and the federal government to the end that all available agencies may be employed, to the best advantage, for the betterment of the agricultural industries of the state, for the improvement of country life and for promoting equality of opportunity for the farmers of the state.

10. To ascertain, as far as possible, what conditions make for the success of a homeseeker and what conditions make for his failure, and to assist in remedying such of the conditions which make for failure as are capable of remedy. To examine or cause to be examined upon application of any land colonization company or lands proposed for colonization, and to certify his findings when conditions warrant:

(A) That the land is suitable for agricultural purposes.

(B) That the location of the land with reference to public roads and shipping facilities is favorable to colonization development.

(C) That the plan of colonization in each instance is in the interest of the settlers or homeseeker.

(D) That the terms of payment are on the amortization plan.

(E) That satisfactory assurance has been given to the commissioner that the plan of colonization adopted will not be changed to the detriment of the homeseeker.

11. To conduct and manage the state fair and to have custody of the state fair grounds, buildings, and other property belonging thereto.

12. To take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests.

13. To sell and dispose of personal property owned by it in such manner as the commissioner may provide, when in the judgment of the department such sale or disposal best promotes the purposes for which the department is established.

14. To contract with the approval of the state board of examiners in respect to any matter within the scope of its authority.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921.

3562. Organization of divisions. For the purpose of the orderly administration of the affairs of the department of agriculture, labor, and industry, the same shall be organized into divisions, which divisions shall

have charge of the matters hereinafter designated, and such other matters properly within the scope of the department, as shall be allotted to them by the commissioner of agriculture.

History: En. Sec. 8, Ch. 216, L. 1921; re-en. Sec. 3562, R. C. M. 1921.

3563. Divisions defined. There shall be four main divisions of the department of agriculture, labor, and industry, to-wit:

The division of farming and dairying.

The division of grain standards and marketing.

The division of horticulture.

The division of labor and publicity.

The divisions hereby created are intended for the sole purpose of promoting the logical and convenient classification of the work of the department, and nothing herein contained shall be deemed to prevent any person engaged in the work of a particular division from performing the work of another division; the commissioner may likewise create additional divisions at his discretion.

History: En. Sec. 9, Ch. 216, L. 1921; re-en. Sec. 3563, R. C. M. 1921.

3564. The division of farming and dairying. The department of agriculture, labor, and industry, through the division of farming, shall enforce all the laws of Montana now existing or hereafter enacted for the protection and regulation of the farming industry in Montana; it shall also make a special study of the conditions of farm life in Montana and the problems of marketing and distribution of farm products, and shall from time to time make recommendations to the governor concerning needed legislation upon said subjects; it shall enforce the provisions of sections 3593 to 3602 of this code, relating to the purity of agricultural seeds, and of sections 3603 to 3607 of this code, relating to the eradication of the barberry plant, and of sections 3631 to 3633 of this code, relating to the control of insect pests and plant diseases. The word "farming" as used in this section shall not be deemed to include horticulture, nor the regulation of the livestock industry.

History: En. Sec. 10, Ch. 216, L. 1921; re-en. Sec. 3564, R. C. M. 1921.

3565. Same—duties concerning poultry raising. The division of farming and dairying shall investigate and bring to the attention of the public the value and importance of poultry raising in Montana, and shall publish for free distribution reports and bulletins pertaining to the advancement of poultry husbandry. Said division shall also supervise and promote local poultry associations, and shall supervise the holding of an annual state poultry exhibition.

History: En. Sec. 11, Ch. 216, L. 1921; re-en. Sec. 3565, R. C. M. 1921.

3566. Powers and duties concerning apiculture. The department of agriculture, labor, and industry shall regulate and promote the business of apiculture in Montana and shall be charged with the duty of instructing the beekeepers of Montana in the approved methods of beekeeping and management of apiaries, control of bee diseases, and other matters pertaining to the promotion of the beekeeping industry in Montana. The commissioner of agriculture shall have authority to prescribe such regula-

tions as in his judgment may be necessary to eradicate, prevent, or control the introduction and dissemination of American or European foul brood, or other diseases of bees. The authority hereby given shall include the power to order the transfer of colonies of bees from hives or containers which cannot be easily examined for brood diseases to other hives or containers; to order the burning of, or to burn, either personally or by deputy, any infected or contaminated bees, bee hives, brood combs, and other equipment; or to order the disinfection thereof; to define and prescribe the limits of apiary control districts; quarantine any apiary or districts where foul brood or any dangerous or infectious diseases are present, to prevent the removal from such quarantined apiary or district of bees, used bee supplies or equipment, excepting under permit, or to issue or withhold such permits. The commissioner may refuse such permit whenever necessary in his judgment to prevent the dissemination of any bee disease, or until he shall have ascertained whether or not such disease is present. No person shall sell, or offer for sale, any apiary, bees, comb, or used beekeeping apparatus within a quarantined district, without a permit from the commissioner of agriculture or his authorized deputy. Shipment or movement into the state of Montana from other states and countries, of bees, queen bees, used or second hand hives, honey combs, frames and all other used beekeeping fixtures is hereby prohibited with exception that this regulation does not affect the shipment into the state of live bees in cages when these are not accompanied by combs or honey. The commissioner of agriculture may in his discretion authorize permits for shipment of bees on combs into Montana. The commissioner of agriculture shall have authority and it shall be his duty, to visit and examine, either personally or by deputy, any apiary for the purpose of ascertaining the existence of disease among bees or brood. The commissioner of agriculture is hereby authorized to employ some competent and qualified person as state apiarist to make the inspections and to perform the other duties relative to beekeeping imposed upon the commissioner by the terms of this act.

History: En. Sec. 12, Ch. 216, L. 1921; re-en. Sec. 3566, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1931.

3566.1. Registration of colonies of honey bees—application blanks and contents. Every person, firm or corporation in the state of Montana who shall possess or own therein one or more colonies of honey bees, or one or more hives containing honey combs or brood combs, but no bees, whether or not such combs contain honey or brood, shall on or before the first day of April of each year, or thereafter within ten days after coming into possession or ownership of such colonies of bees or bee hives with combs, but without bees, or within ten days after changing the location thereof, register the same in the office of the commissioner of agriculture at Helena and obtain a registration certificate, which shall entitle him to own, possess or control colonies of bees for the calendar year then current or remainder thereof, at the location or locations named in the registration certificate. Application for such registration of colonies of honey bees shall be made to the commissioner of agriculture upon blanks prepared by him for this purpose, which shall be distributed by him to those applying for them through-

out the state. Such blanks shall contain a statement of the name, place of residence and place of business of the owner and applicant, together with the number of colonies of bees or bee hives containing combs but no bees, to be registered and their location or locations in the state, defining such location by lot and block if within the corporate limit of a city or by section, or sectional division to the nearest quarter section, and township and range, and stating also the name of owner, renter or occupant of the land whereupon such colonies or hives are located.

History: En. Sec. 1, Ch. 181, L. 1925.

3566.2. Registration certificates to be posted. Every person, firm or corporation in the state of Montana who shall possess or own one or more colonies of bees of one or more bee hives containing honey combs or brood combs, but no bees, whether or not such combs contain honey or brood, shall be and hereby is required to post in a conspicuous place at or near the location of his colonies of honey bees or bee hives, a copy of the registration certificate provided for in section 3566.1, duly signed by the commissioner of agriculture or his authorized deputy. Every person, firm or corporation in the state of Montana who shall possess or own therein more than one bee yard or location where colonies or bee hives are kept, shall post in a conspicuous place a duly signed registration certificate in each and every such bee yard or location.

History: En. Sec. 2, Ch. 181, L. 1925.

3566.3. Registration fee. The state commissioner of agriculture, either himself or through his deputy, is authorized and required to collect a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by each person, firm or corporation in the state of Montana:

1 to 10 colonies of bees	\$1.00
11 to 50 colonies	2.50
51 to 200 colonies	5.00
201 to 300 colonies	7.50
301 to 400 colonies	10.00
401 colonies and upward	15.00

History: En. Sec. 3, Ch. 181, L. 1925.

3566.4. State bee keepers fund—composition and use of. All registration fees collected under the provisions of this act shall be transmitted by the commissioner of agriculture to the state treasurer, but shall constitute a special fund to be known as the “state bee keepers fund” that may be drawn upon from time to time by the state commissioner of agriculture to defray the expenses of the enforcement of the state laws of Montana concerning the business of bee keeping and especially section 3566. The fund accruing from registration fees and made available for the enforcement of laws concerning the business of bee keeping in Montana shall be all of the money which the secretary of agriculture, or his deputies, shall spend for the enforcement of this act.

History: En. Sec. 4, Ch. 181, L. 1925.

3566.5. Penalties for violations. Any person, firm or corporation failing, neglecting or refusing to register his bees or bee hives containing combs, with or without bees, whether, or not such combs contain honey or brood, shall be deemed guilty of a misdemeanor and punished by a fine of not to exceed twenty-five (\$25.00) dollars for the first offense and fifty (\$50.00) dollars for any later offense.

History: En. Sec. 5, Ch. 181, L. 1925.

3567. Separate division may be created. The commissioner of agriculture may, in his discretion, create a separate division to have charge of the subject of poultry husbandry and apiculture.

History: En. Sec. 13, Ch. 216, L. 1921; re-en. Sec. 3567, R. C. M. 1921.

3568-3572. Repealed—Chapter 93, laws of 1929.

3572.1. Deceit in grade, measure or test of milk and cream unlawful. No person, firm or corporation selling or delivering milk or cream, and no person, firm, or corporation receiving or purchasing milk or cream by weight, grade or Babcock test, or either, or by measure, grade or Babcock test, or either, shall with intent to deceive or defraud as to the weight, grade, measure or Babcock test thereof; manipulate, change or alter such measure, Babcock test, grade or weight, or make or return to any person any false, inaccurate or untrue statement of such weight, grade, Babcock test or measure, or use any measure, grading or testing apparatus which does not comply with the standards of the department of agriculture or which has been condemned as inaccurate.

History: En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933.

3572.2. Penalty for violations—revocation of license. Any person, firm or corporation who violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment in the county jail for not more than two (2) months, or by both such fine and imprisonment. The commissioner of agriculture is also authorized and empowered to revoke any license issued by his department to any person, firm or corporation upon his or their conviction for violation of the provisions of this act.

History: En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933.

3573. The division of grain standards and marketing. The department of agriculture, labor and industry, through the division of grain standards and marketing, shall enforce all the laws of the state of Montana concerning the handling, weighing, grading, inspection, storage and marketing of grain, and the management of public warehouses.

History: En. Sec. 19, Ch. 216, L. 1921; re-en. Sec. 3573, R. C. M. 1921.

3574. Definitions. Whenever the word "grain" is mentioned in this act, it shall be construed to include flax. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment or handling. The term "public warehouseman" shall be held to mean and include every person, associa-

tion, firm and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together, and the identity of the different lots or parcels is not preserved. The term "grain dealer" shall be held to mean and include every person, firm, association and corporation owning, controlling, or operating a warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling. The term "track buyer" shall mean and include every person, firm, association, and corporation who engages in the business of buying grain for shipment or milling, and who does not own, control, or operate a warehouse or public warehouse. The terms "agent," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933.

References

American Surety Co. v. Butler et al., 86 M 584, 593, 284 P 1011; Whorley v. Patton-Kjose Company, Inc., 90 M 461, 477, 5 P 2d 210.

3575. Repealed—Chapter 124, laws of 1927.

3575.1. State scale expert—appointment—bond—deputy's bond—duties. The commissioner of agriculture shall employ an expert tester of scales, known as the state scale expert, whose duties it shall be, under such rules and regulations as the commissioner may prescribe, to test all scales within the state of Montana at least once each year, with the exception of scales, weights and balances not used for public weighing, unless upon request. The state scale expert shall give a bond to the state of Montana in the sum of two thousand dollars (\$2,000), and each deputy shall give a bond to the state of Montana in the sum of one thousand dollars (\$1,000), conditioned upon the faithful performances of their duties. It shall be the duty of the state scale expert and his deputies to enforce the provisions of this act. The commissioner of agriculture shall make such rules and regulations as he may deem necessary to carry out the provisions of this act.

History: En. Sec. 1, Ch. 124, L. 1927; amd. Sec. 1, Ch. 31, L. 1933.

3575.2. Fees for scale inspection service. There shall be collected by the state scale expert or his deputies from each person, firm, co-partnership or corporation the following inspection fees: For each railroad track scale the sum of ten dollars (\$10.00); grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, ten dollars (\$10.00); wagon scale, truck scale, coal scale, dump scale, automatic or hopper shipping scale, beet scale, and stock scale, five dollars (\$5.00); for each dormant platform scale, and dial scales with a capacity from five hundred (500) pounds to one thousand (1,000) pounds two dollars (\$2.00); each portable scale, meat track scale and commercial person weighing scale one dollar (\$1.00); grain testers and other small scales used for weighing or testing grain in grain elevators or warehouses, fifty cents (50c). All counter scales with a capacity of one to ten pounds twenty-five cents (25c); all counter scales with a capacity of ten (10) to thirty (30) pounds seventy-five cents (75c).

History: En. Sec. 2, Ch. 124, L. 1927; amd. Sec. 2, Ch. 31, L. 1933.

3575.3. Payment of expenses of scale expert—contingent revolving fund. All bills and accounts of expense incurred by the state scale expert and his deputies shall be presented to the board of examiners and allowed by said board in the same manner as provided for other claims contracted for and in behalf of the state of Montana. And to expedite the handling of the work in the field there shall be set aside a contingent revolving fund of two thousand dollars (\$2000.00) out of which the expenses of the field men shall be paid each week, together with other emergency cash claims.

History: En. Sec. 3, Ch. 124, L. 1927.

3575.4. Certificate of test. A suitable certificate shall be prepared by the state scale expert to be affixed to all weighing devices tested under the terms of this act. Said certificate shall bear the signature of the state scale expert or his deputy doing the work and shall indicate the date when the test was made and whether the device was sealed or condemned.

History: En. Sec. 4, Ch. 124, L. 1927.

3575.5. Untested weighing devices not to be used—use of rejected devices forbidden. No weighing device, which has not been tested as prescribed herein, shall hereafter be used without permission from the department of agriculture, and an inspection of each such weighing device shall be made at least once each year, provided, however, that a period of sixty (60) days after the passage of this act shall be allowed for the first test of all such scales and weighing devices, and no person shall be prosecuted for any violation of the terms of this act until after said sixty (60) days period. The department of agriculture shall at the request of the owner of any weighing device subject to the terms of this act inspect and test such apparatus. Any person or persons making use of weighing devices subject to the terms of this act must report to the commissioner of agriculture in writing the number and location of said weighing device and must promptly report the installation of any new weighing device. No weighing device rejected or condemned after inspection as required by this act shall be used until the same has been tested and sealed as required by this act.

History: En. Sec. 5, Ch. 124, L. 1927.

3575.6. Permit to use weighing device until inspection. The department of agriculture may grant permission for the use of a weighing device until the inspection can be made (without causing too great expense), as provided by this act.

History: En. Sec. 6, Ch. 124, L. 1927.

3575.7. Penalty for making false test. Any state scale expert or deputy who shall make a false test of any scale or who shall seal the same without having been properly tested, in accordance with the terms of this act, shall be guilty of a misdemeanor, and punished by a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00).

History: En. Sec. 7, Ch. 124, L. 1927; amd. Sec. 3, Ch. 31, L. 1933.

3575.8. Scale testing equipment to be transferred to department of agriculture. All equipment in possession of the secretary of state of Montana, for the purpose of calibrating test weights, shall be transferred to the department of agriculture, for use in the scale testing department.

History: En. as Sec. 7-A by Sec. 4, Ch. 31, L. 1933.

3576. Appointment of chief inspector of grain, inspectors, samplers, weighers—qualifications of inspectors—interest in grain forbidden. The commissioner of agriculture shall appoint a chief inspector of grain for the state, and such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. Such inspectors shall be able to qualify under the terms and in accordance with the United States federal grain standards act; no such inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929.

3577. Penalty for misconduct by inspectors, etc. Any inspector, sampler, or weigher, who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect, sample, or weigh any grain, or who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such inspector, sampler, or weigher, or any person, persons, corporation, or agent, who shall improperly influence, or attempt to improperly influence, any inspector, sampler, or weigher in the performance of his duties, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 23, Ch. 216, L. 1921; re-en. Sec. 3577, R. C. M. 1921.

3578. Designation of inspection points—deputy inspectors. Such cities and towns where grain is received in carload lots may be designated by the commissioner of agriculture as inspection points, and be provided with state inspection and weighing; provided, that the expenditures for the inspection and weighing at the points designated by the commissioner shall not exceed the receipts of fees at such point or points. The commissioner may also assign deputy inspectors to such territory or portions of the state as it may determine to be necessary, and it shall be the duty of such deputy inspectors to inspect grain delivered in less than carload lots in such territory or portions of the state to which they may be assigned, to furnish producers within such territory or portions of the state with such inspection as shall enable them to determine the grade of their grain, and to perform such other duties as the commissioner may prescribe.

History: En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R. C. M. 1921.

3579. Charges of public warehousemen. Charges must be made by all public warehousemen subject to the provisions of this act, for the handling or storage of grain, as follows:

(a) Two cents per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery—not less than forty-eight hours but where conditions permit, special bin assemblage of grain without loss of identity for carload shipment shall be construed as immediate delivery, provided total period of assemblage and delivery does not exceed seventy-two hours. Provided in case said period

is from seventy-two hours to one hundred and six hours, the entire charge shall be two and one-half cents per bushel, and from one hundred and six to one hundred and thirty hours, the charge shall be three cents per bushel. This rate for immediate delivery applies to all grain so delivered.

(b) Four cents per bushel for all grains except flax, for receiving, grading, weighing, elevating, insuring, fifteen days or part thereof free storage, and delivering to the owner. For flax this charge shall be five cents per bushel.

(c) Two cents per bushel for cleaning grain at request of owner where there are cleaning facilities, in which case screenings shall be delivered to owner.

(d) The charges for storage shall be: one-thirtieth of one cent per day per bushel for each day in storage after period of free storage has elapsed.

(e) Twenty-five per cent reduction from the above charges shall be allowed when the market price of wheat being sold at point of origin at time of sale is less than fifty cents per bushel.

Failure on the part of any public warehouseman to comply with the provisions of this act will render the licenses of such warehouseman subject to revocation and cancellation by the commissioner of agriculture.

History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R. C. M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933.

Definition of Wheat

"Wheat" as used in the storage act in determining the storage charges connotes wheat of the highest grade. Attorney General's Opinions, No. 154, Vol. 15.

Operation and Effect

Plaintiff delivered a quantity of grain to an elevator. Three months later he sold it to the elevator company; at that time, while section 3585 requires the ware-

houseman to charge storage, and this section prescribes the penalty for failure to do so, none was charged when the sale was made. In an action to recover the balance of the sale price due, the buyer contended that no storage having been charged, the contract of sale was invalid as against public policy. Held, that the contract of storage, one of bailment and the contract of sale were separate and distinct contracts, and in the absence of proof that the waiver of storage was an inducement for the sale, the latter transaction was valid. *Spurgeon v. Imperial Elevator Co.*, 99 M 432, 43 P 2d 891.

3580. Establishment of standard grain grades—procedure. The commissioner of agriculture shall fix and establish standard grades to apply to all grain bought or handled by public warehouses in this state. The commissioner of agriculture shall adopt as state grade standards all grades for grain now or hereafter established by the United States department of agriculture. Standards for grain, other than those fixed as above, shall be established by the commissioner of agriculture after due notice and public hearing, notice thereof to be given by publication in three newspapers of the state, at least ten days prior to such hearing.

Grade standards, or any alteration or modification of such standards which the commissioner of agriculture may establish, shall not become effective within thirty days after publication, except in the case of grades established by the United States department of agriculture, which shall become effective ten days after publication.

All interested persons desiring to be heard shall be permitted to give testimony, and such other witnesses may be subpoenaed as the commissioner of agriculture may deem necessary, which witnesses shall be entitled

to the same fees and mileage as are provided for witnesses in civil actions, and shall be paid out of the fund created by the provisions of this act. Such grain standards shall not apply to grain contracted for previous to their disposition.

The commissioner of agriculture shall, after such hearing, make and issue reasonable rules and regulations governing the dockage, which shall be made on inferior grades and in all executory contracts thereafter entered into; provided, that the same shall not conflict with the terms of the United States federal grain standard act. Where the price or amount to be paid therefor depends upon terminal weight or grade, such rules and regulations shall control the dockage in so far as the same affects the price to be paid, and such rules and regulations shall become part of the contract of sale. The commissioner of agriculture shall also make provisions for sample inspection of grain, make rules and regulations governing same and provide that such inspection when made shall be final.

The commissioner of agriculture shall have power to require, after personal notice of not less than thirty days served upon any warehouseman and a public hearing, cleaning apparatus to be established where none now exists to remove dockage and the return of same to the owner, or its equivalent in value, less cleaning charges, which may be fixed by the commissioner of agriculture.

The commissioner of agriculture shall, during the grain-marketing season, appoint such deputy inspectors as they deem necessary to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing, and enforcing the rules and regulations laid down by the commissioner.

It shall be the duty of the commissioner of agriculture, immediately after the establishment of such grades, and the promulgation of rules and regulations fixing dockage, as herein provided, to supply all public warehousemen which the records of his office show are then or thereafter engaged in operating such warehouses, with a copy of such grades, rules, and regulations. It shall be the duty of every public warehouseman to keep such copy on file in a convenient place in every such warehouse, and if an office is maintained in connection with such warehouse, a copy of such grades, rules and regulations shall be kept on file in such office, and a placard notice posted in a conspicuous place in every such warehouse and such office, reading as follows: "A copy of Montana grades, rules, and regulations is on file here for information of interested parties."

Every such warehouseman shall exhibit such copy of grades, rules, and regulations to any interested party applying therefor at any such warehouse or office, and permit such interested party to examine and consult such copy.

History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921.

3581. Fees for inspection and weighing. The commissioner of agriculture shall fix the fees for inspection and weighing of grain, and such fees shall be a lien upon such grain until paid.

No commercial laboratory for public service shall certify to the grade or protein content of grain unless such commercial laboratory is licensed

by the commissioner of agriculture under such rules and regulations as he may prescribe.

History: En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R. C. M. 1921; amd. Sec. 4, Ch. 154, L. 1929.

3582. Records of weighing and grading—certificate. The inspectors, samplers and weighers shall, at places provided for state inspection, have exclusive control of the weighing and grading of grain to be inspected, and the certificates of such officers relative to such weighing and grading, shall be conclusive upon all parties interested. Suitable books and records shall be kept, in which shall be entered a faithful and true record of every carload of grain inspected or weighed by them, and showing the number of and initial or other designation of the car containing such carload, its weight, the kind of grain and its grade, and if graded below standard No. 1 grade, the reason for such grade, if of inferior grade, the amount of such dockage, the amount of fees and forfeitures and disposition of the same, and for each car of grain they shall give a certificate of inspection, showing the kind and grade of the same and the reason for all grades below No. 1, the amount to be allowed for dockage, if any. They shall also furnish the agent of the railroad company, or other carrier over which such commodity was shipped or carried, a certificate showing the weight thereof, if requested to do so. They shall also keep a true record of all appeals, decisions, and a complete record of every official act, which books and records shall be open to inspection by any party in interest.

History: En. Sec. 28, Ch. 216, L. 1921; re-en. Sec. 3582, R. C. M. 1921.

3583. Removal of inspectors, samplers or weighers for misconduct. Upon written complaint filed with the commissioner of agriculture, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commissioner of agriculture shall investigate such charges, and, if it be found sustained, shall remove such officer.

History: En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R. C. M. 1921.

3584. Appeals to commissioner of agriculture—hearing and order. In case any owner, consignee, or shipper of grain, or any warehouseman, shall be aggrieved at the grading of such commodity, such aggrieved person may appeal to the commissioner of agriculture from such decision within ten days from the date of certificate, by giving notice of appeal and paying a fee to be fixed by the commissioner of agriculture, which shall be refunded if the decision appealed from is sustained. Such notice of appeal may be given by letter or notice to the commissioner of agriculture, stating that such party appeals from the decision of the inspector, and specifying the initials and numbers of the cars in which such grain was contained when inspected and graded.

The appellant shall also file with the commissioner of agriculture a list containing the names and addresses of all parties interested in the subject matter. It shall be the duty of the commissioner of agriculture, upon receiving such notice and list of interested parties, to immediately notify the parties interested of the time and place designated by it for a hearing, and at such time and place, which shall be five days from the date of

receiving such notice, hold a hearing and inquire into the reasonableness and correctness of such original grading, and such evidence shall be received as parties thereto may desire to offer. After such hearing, the commissioner of agriculture shall make such order affirming or modifying the grade so established by the inspector as the facts and evidence may justify.

History: En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R. C. M. 1921.

3585. Discrimination in charges by warehousemen prohibited. If any public warehouseman subject to the provisions of this act shall, directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person, or persons, a greater or lesser compensation for any service rendered, or to be rendered, in the handling or storage of grain, than he demands, collects, or receives from any other person or persons for a like and contemporaneous service in the handling or storage of grain, under substantially similar circumstances or conditions, or if any such public warehouseman shall make or give any undue or unreasonable preference or advantage to any person, company, or corporation in any respect whatever, or shall subject any particular person, company, firm, or corporation, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever, such warehouseman shall be subject to a penalty as herein provided.

History: En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R. C. M. 1921.

Operation and Effect

Plaintiff delivered a quantity of grain to an elevator. Three months later he sold it to the elevator company; at that time, while this section requires the warehouseman to charge storage, and section 3579 prescribes the penalty for failure to do so, none was charged when the sale was made. In an action to recover the bal-

ance of the sale price due, the buyer contended that no storage having been charged, the contract of sale was invalid as against public policy. Held, that the contract of storage, one of bailment, and the contract of sale were separate and distinct contracts, and in the absence of proof that the waiver of storage was an inducement for the sale, the latter transaction was valid. *Spurgeon v. Imperial Elevator Co.*, 99 M 432, 43 P 2d 981.

3586. Duty of warehousemen to receive grain—warehouse receipt. Every public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable conditions for storage. A warehouse receipt, in form prescribed by law and the rules and regulations of the commissioner of agriculture, shall be issued and delivered to the owner, or his representative, immediately upon receipt of such load or parcel of grain.

History: En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R. C. M. 1921.

Bailment

An operator of a grain elevator is a public warehouseman; delivery of grain for storage constitutes a bailment, and as bailee he must, under the Montana law, at all times keep on hand in bonded warehouses sufficient grain to make redelivery

on all storage receipts, and may not sell or deliver it out of storage except as provided by law; he may not use it for purposes of speculation on the market. *Whorley v. Patton-Kjose Co. Inc.*, 90 M 461, 477, 5 P 2d 210.

References

Stites v. Montana & Dakota Grain Co., 86 M 559, 561, 284 P 536.

3587. Penalty for unlawful issue of warehouse receipt. It shall be unlawful for any public grain warehouseman to issue a receipt for grain,

except on the actual delivery of the grain into the warehouse, or to issue a warehouse receipt for a greater amount of grain than that actually received.

Any person violating any of the provisions of this section, and any grain inspector knowingly permitting any grain to be delivered contrary to the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months.

History: En. Sec. 28, Ch. 209, L. 1919; re-en. Sec. 3587, R. C. M. 1921.

References

Stites v. Montana & Dakota Grain Co., 86 M 559, 561, 284 P 536.

3588. Regulation of sale and storage of grain—termination of storage contract—sale of grain for charges. In cases of grain being sold outright to the warehouseman at the time of delivery or grain placed in store with the warehouseman to be sold at a future time to the warehouseman to whom delivered, settlement shall be made on the basis of grade, quality, protein content and quantity. In cases of storage of grain with intent of future re-delivery of the grain the owner must so designate at time of delivery to enable the warehouseman to special bin. Failure to so designate at time of delivery, the grain will lose its identity in general storage. Therefore, owner agrees to accept quantity of like grade, kind and quality (as provided for under the United States federal grain standards act) from warehouseman's general storage. Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of grade agreed upon, of equal quality or value and quantity equal to that placed by him in store shall be delivered to the holder of such receipt within forty-eight hours after the facilities for receiving the same have been provided, or at the option of the owner such warehouseman shall deliver such grain at terminal, or if mutually agreed, the equivalent market value thereof on said date, less any freight and storage charges to terminal, and such other charges as may be allowed by the commissioner of agriculture. Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company, and as to the manner of loading and billing shipments made in such cars as are furnished by the transportation company. The warehouseman shall load and bill all such shipments in exact accordance with instructions given, and shall be liable to the owner of the warehouse receipt so surrendered for the amount of any excess freight paid, or for other damages suffered by the owner of the warehouse receipt, resulting from the failure of the warehouseman to follow accurately the loading and billing instructions as given him, provided that the owner of said warehouse receipt shall immediately furnish to said warehouseman a duplicate copy of the original state weighmaster's certificate of weight of said carlot shipment at terminal. If any dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage, or both, of any grain, in accordance with standards at terminal points, an agreed average sample

of at least one quart of said grain in dispute may be taken by the parties interested, and forwarded in an air tight tin container duly marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties, to the chief grain inspector, Great Falls, Montana, or any state laboratory whose chief inspector has been qualified by the United States department of agriculture to grade grain, and make laboratory tests for protein, who will, upon request, examine said grain and adjudge what grade said sample is entitled to under the inspection rules and which amount of dockage it contains, and the findings of such inspection shall be binding upon both parties, subject to appeal, as hereinafter provided. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany sample.

All storage contracts on grain in store in public local grain warehouses, as evidenced by a warehouse receipt, shall terminate on June 30th of each year.

Storage on any or all grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the storage receipt, together with a demand for delivery of such grain, or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, as prescribed in this act, the warehouseman shall, upon the expiration of the storage contract, sell so much of such stored grain at the local market price on the close of business on said day as is sufficient to pay the accrued storage charges, and shall thereupon issue new storage tickets for the balance of the grain to the owner thereof upon surrender by him of the original storage receipts. Provided, further, that it shall be the duty of the warehouseman on the first day of June of each year to notice all storage ticket holders at their last known address of the provisions of this act.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933.

References

American Surety Co. v. Butler et al., 86 M 584, 593, 284 P 1011; Whorley v. Patton-Kjose Co., Inc., 90 M 461, 477, 5 P 2d 210.

3588.1. Disposal of grain without notice to department of agriculture and compliance with law forbidden—delivery of grain for warehouse receipts. No such warehouseman shall sell or otherwise dispose of, or deliver out of store, except to the owner, any stored grain, except upon notice, in advance, to the department of agriculture, and after complying in full with the laws of the state and the regulations of the department of agriculture relating to the handling of stored grain. Any person, firm, association or corporation owning or operating more than one public warehouse in this state shall be permitted to make delivery of wheat from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse, when grain for storage has been presented at any warehouse in excess of its available storage capacity. Provided, that this shall not be construed

as conferring upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse receipts; and provided further, that such warehouseman shall, at all times, keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding storage receipts. Provided, further, that freight and other charges shall be figured on the basis of the point of receipt.

History: En. Sec. 3588-A by Sec. 4, Ch. 41, L. 1923.

References

Whorley v. Patton-Kjose Co., Inc., 90 M 461, 477, 5 P 2d 210; Department of Agriculture etc. v. DeVore, 91 M 47, 6 P 2d 125.

3588.2. Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain. Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee, and in such event grain on hand in any particular warehouse or elevator shall first be applied to the redemption and satisfaction of receipts issued by such warehouse.

History: En. Sec. 3588-B by Sec. 4, Ch. 41, L. 1923.

References

Department of Agriculture etc. v. DeVore, 91 M 47, 6 P 2d 125.

3589. Annual report of warehouseman—special reports—penalty for failure to report—bond—license and fee—penalty for doing business without license. On June 30th of each year every warehouseman shall make report, under oath to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from such warehouse licensed under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehouseman at such times as the commissioner may deem expedient. The commissioner may cause every warehouse and business thereof and the mode of conducting the same to be inspected by his authorized agent, whenever deemed proper, and the books, accounts, records, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. Any person, firm, or corporation, who shall knowingly falsify any of its reports to the department of agriculture, or who shall refuse or fail to make such reports when requested to do so by the commissioner of agriculture or his agents, or who shall refuse or resist inspection as provided in this section, shall be guilty of a misdemeanor and

be punished by a fine of not less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars.

Each person, firm, corporation or association of persons operating any public warehouse or warehouses subject to the provisions of this act, and every track-buyer, dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July of each year, give a bond with good and sufficient sureties to be approved by the commissioner of agriculture to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by the law.

Every person or persons, firm, co-partnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track-buyer, dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana, a license fee in the sum of fifteen (\$15.00) dollars for each and every warehouse, elevator, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, where grain is received, stored and shipped, and upon the payment of such fee of fifteen (\$15.00) dollars for each and every warehouse, elevator or other place, where grain is merchandized within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, co-partnership, corporation or association of persons, a license to engage in grain merchandising at the place designated within the state of Montana, for a period of one year. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked (save only that a public warehouseman shall be permitted to deliver grain previously stored with him), shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923.

Operation and Effect

Indemnitors who assumed liability for losses sustained by a surety on a track buyer's bond (a trackbuyer being one engaged in the buying of grain for shipment or milling in earload lots but not operating a warehouse) under the impression that it was the bond required by this section, before amendment, which then did not make it the duty of a trackbuyer to pay the market price therefor as it did in the case of warehousemen. The bond executed as required by the state commissioner of agriculture, and of the contents of which the indemnitors were ignorant, was a common-law bond containing the

provision that the surety would undertake to pay in full for all grain purchased if the trackbuyer failed to pay. The indemnity agreement contained a provision rendering the signers liable for all sums the surety would be required to pay under the bond. The trackbuyer went into bankruptcy; sellers of grain brought suit on the bond for moneys due them from the trackbuyer and had judgment. Held, in an action by the surety to recover upon the indemnity agreement, that since the bond was not the statutory trackbuyer's bond, but a common-law bond executed after the indemnity agreement had been entered into, and the indemnitors did not intend to indemnify against loss for failure of the trackbuyer to pay for grain and the statute did not make it his duty to do so, there was no meeting of minds

as to the indemnity, therefore no contract in that behalf, and judgment for plaintiff surety was erroneous. *American Surety Co. v. Butler et al.*, 86 M 584, 587, 284 P 1011.

Id. Legislative construction of a former statute is persuasive but will only be adopted when clearly expressed; but if in amending a former act upon the erroneous assumption that it contained a provision it did not, courts are at liberty to disregard such construction; hence the contention that, while this section did not contain a provision that a trackbuyer's bond should cover his faithful performance of his duty to pay for grain bought, by including trackbuyers in the provision imposing that duty upon warehousemen when it amended this section (ch. 42, laws 1925), it construed the original act

as requiring that duty with relation to trackbuyers, has no merit.

The purpose of the legislature in enacting chapter 42, laws of 1925 (sec. 3589.1), was to authorize the state department of agriculture to do whatever is "lawful and needful" to have the proceeds of stored grain, upon insolvency of the warehouseman, applied to the redemption of storage tickets, and, when such proceeds are exhausted and there still remains a balance due them, to demand payment of the bond provided for in this section; if this shall prove insufficient to discharge the indebtedness, the holders of such tickets stand upon the same footing as do other creditors of the warehouseman. *Department of Agriculture, etc. v. DeVore*, 91 M 47, 51 et seq., 6 P 2d 125.

3589.1. Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist. Whenever any warehouseman, grain dealer, track buyer, broker, agent or commission man is found to be in a position where he cannot, or where there is a probability that he will not meet in full all storage obligations or other obligations resulting from the delivery of grain, it shall be the duty of the department of agriculture, through the division of grain standards, to intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made, and the department of agriculture shall have authority to do any and all things lawful and needful for the protection of the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made, and when examination by the department of agriculture shall disclose that for any reason it is impossible for any warehouseman, grain dealer, track buyer, broker, agent or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without having recourse upon the bond filed by said warehouseman, grain dealer, track buyer, broker, agent or commission man, it shall then be the duty of the department of agriculture for the use and benefit of holders of such unpaid warehouse receipts or other evidences of the delivery of grain for which payment has not been made, to demand payment of its undertaking by the surety upon the bond in such amount as may be necessary for full settlement of warehouse receipts or other evidences of delivery of grain for which payment has not been made. It shall be the duty of the attorney general or any county attorney of this state to represent the department of agriculture in any necessary action against such bond when facts constituting grounds for action are laid before him by the department of agriculture.

History: En. Sec. 3589-A by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925.

Operation and Effect

While the status of holders of grain

storage tickets with reference to the warehouseman is that of bailors, they are creditors within the meaning of this section, authorizing the state department of agriculture to intervene where the warehouseman becomes insolvent, for the pur-

pose of protecting their interests. Department of Agriculture, etc. v. DeVore, 91 M 47, 51 et seq., 6 P 2d 125.

Legislative construction of a former statute is persuasive but will only be adopted when clearly expressed; but if in amending a former act upon the erroneous assumption that it contained a provision it did not, courts are at liberty to disregard such construction; hence the contention that, while section 3589 above,

did not contain a provision that a track-buyer's bond should cover his faithful performance of his duty to pay for grain bought, by including trackbuyers in the provision imposing that duty upon warehousemen when it amended said section by adding this section, it construed the original act as requiring that duty with relation to trackbuyers, has no merit. American Surety Co. v. Butler et al., 86 M 584, 593, 284 P 1011.

3590. Special inspection of grain. In case grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this act, the buyer, seller, or person making the delivery may have it inspected out by notifying an inspector, whose duty it shall be to have such grain inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, on request, an inspector's certificate showing the grade of such grain. The person or persons calling for such inspection shall pay for the same a reasonable fee, to be fixed by the commissioner of agriculture.

Grain that is shipped to points within the state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of such grain. The charge for such service shall at least equal the entire cost thereof, and shall be paid by the party calling for the same.

History: En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R. C. M. 1921.

3591. Sampling grain. From all grain shipped to terminal warehouses, and from all grain inspected or weighed, samples may be drawn, which samples shall become the property of the state, and subject to disposition by the commissioner of agriculture, under such rules and regulations as the commissioner may prescribe.

It shall be the duty of the commissioner of agriculture to transmit samples of grain, showing the standards thereof adopted, to such chambers of commerce, boards of trade, exporters and persons, firms, corporations, or associations handling and dealing in grain, as the commissioner may designate, and upon request he shall furnish such samples to smaller parties in this state or the United States, under such reasonable rules and regulations as the commissioner may prescribe.

History: En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R. C. M. 1921.

3592. Examination of grain cars at destination—license of grain weighers. All inspectors, samplers and weighers, before opening the doors of any car containing grain, upon arrival at any of the places designated by the commissioner of agriculture for inspection, shall first ascertain the condition of such cars, and determine whether any leakages have occurred while said cars were in transit, whether or not the doors were properly secured and sealed at point of shipment, and shall make a record of such facts in all cases, giving seal numbers.

After such examinations have been made, the state officials shall securely close and re-seal such doors as have been opened by them, using the special seal of the commissioner of agriculture for the purpose.

A record of all original seals broken by said officials and the date when broken, and also a record number of said seals, shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh and superintend the unloading of all cars of grain subject to inspection, and it shall be unlawful for any other person, or persons, to break the seal or weigh such cars of grain.

The commissioner of agriculture shall have power to require all persons, firms, corporations, or warehousemen engaged in weighing grain within the state of Montana to obtain a license, and prescribe rules and regulations governing the application for and the issuance of such licenses, but no fee shall be charged therefor, and any person, firm, corporation, or warehouseman, who shall weigh any grain without first having obtained said license, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars.

All fees, licenses, and other charges collected under the provisions of this act shall be, by the person collecting the same, paid to the state treasurer of the state of Montana, and by said treasurer placed in the general fund.

History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R. C. M. 1921.

3592.1. License for seed warehouses. That all persons, firms, co-partnerships, corporations and associations operating any public warehouse or warehouses in this state and which hold themselves out to the public as receiving agricultural seeds of any kind for storage for the public shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15.00) for each and every warehouse, elevator or other place owned, conducted or operated by such person or persons, firm, co-partnership, corporation or association wherein agricultural seed of any kind is received and stored, and upon the payment of such fee of fifteen dollars (\$15.00) for each and every warehouse, elevator or other place where agricultural seed is received and stored within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, co-partnership, corporation or association a license to engage in the storing of agricultural seed at the place designated within the state of Montana, for a period of one year.

History: En. Sec. 1, Ch. 50, L. 1927.

3592.2. Bond of seed warehousemen. Each such person, firm, co-partnership, corporation or association subject to the provisions of the act shall, on or before the first day of July of each year, give a bond with good and sufficient sureties to be approved by the commissioner of agriculture to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by law. Any person, firm, association or corporation who shall commence the business aforesaid after the first day of July of any year shall be required to pay said license fee and furnish such bond before engaging in or carrying on any such business.

History: En. Sec. 2, Ch. 50, L. 1927.

3592.3. Penalty for conducting business without license. Any person, firm, co-partnership, corporation or association who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

History: En. Sec. 3, Ch. 50, L. 1927.

3592.4. Definition of "agricultural seeds." The term "agricultural seeds" as used in this act shall be held to mean and include the seeds of red clover, white clover, alsike, alfalfa, Kentucky bluegrass, timothy, brome grass, orchard-grass, redtop, meadow fescue, oatgrass, rye-grass, and other grasses and forage plants, corn, rape, buckwheat, beans, peas, and registered or certified seed grains in bags.

History: En. Sec. 4, Ch. 50, L. 1927.

3592.5. Warehouseman to receive seed for storage without discrimination. Every warehouseman subject to the provisions of this act shall receive for storage without discrimination of any kind so far as the capacity of his warehouse will permit all agricultural seeds tendered to him in the usual course of business in suitable conditions for storage providing, however, that he shall not be obliged to receive any agricultural seeds other than those which he holds himself out as dealing in and which he is equipped to handle.

History: En. Sec. 5, Ch. 50, L. 1927.

3592.6. Rules and regulations may be made by commissioner of agriculture—reports—form of warehouse receipts. The commissioner of agriculture shall prescribe such rules and regulations as he may deem necessary for the safe conduct of the business referred to in this act and to that end may if he deems it necessary, require reports from said warehouseman on blanks or forms that may be prepared by him and shall prescribe the form and contents of the warehouse receipt which shall be issued and delivered to the owner of such agricultural seeds, or his representative, upon the receipt of such agricultural seed. Among other things, said receipt shall indicate whether the agricultural seed is fancy, good, fair or poor.

History: En. Sec. 6, Ch. 50, L. 1927.

3592.7. Storage constitutes bailment. The storage of agricultural seed under the terms of this act shall constitute a bailment and not a sale and upon the return of the warehouse receipt to the proper warehouseman properly endorsed, and upon payment or tender of all advances and legal charges the holder of such warehouse receipt shall be entitled to, and it shall be compulsory for the warehouseman to deliver to such owner and holder of the warehouse receipt, the identical agricultural seed so placed in said warehouse for storage.

History: En. Sec. 7, Ch. 50, L. 1927.

3592.8. Additional bond required from grain warehousemen for seed storage. None of the provisions of this act shall be construed as requiring an additional license from a public warehouseman or other person, corporation or association, who is licensed to handle or store grain, but if any person, firm, co-partnership, corporation or association holding a license to handle or store grain shall also choose to engage in the business of storing any agricultural seed for the public it shall be necessary to furnish such additional bond as the commissioner of agriculture shall determine, and in the storage of such agricultural seed such person, firm, co-partnership, corporation or association shall be subject to the terms and conditions of this act.

History: En. Sec. 8, Ch. 50, L. 1927.

3592.9. Cooperative agencies' authority to store seeds—effect of partial invalidity of act. Co-operative associations or co-operative corporations when licensed to handle agricultural seeds as herein provided may reserve sufficient storage space to provide for the storage of such agricultural seeds that may reasonably be expected to be tendered for storage by their members before receiving seeds for storage from non-members. If for any reason the preceding part of this section shall be declared invalid, then cooperative associations and co-operative corporations when licensed to handle agricultural seeds shall be subject to the same terms and conditions as others licensed to handle seeds as in the other parts of this act provided and the remaining parts of this act shall not be affected.

History: En. Sec. 9, Ch. 50, L. 1927.

3592.10. Purpose of act. The purpose and object of this act is to provide the owners of grain the means of warehouse or storing the same on farms on or near railroad right-of-ways and other suitable places under proper safeguards, as a basis of farm credit on the grain so stored.

History: En. Sec. 1, Ch. 27, L. 1929.

3592.11. Farm storage commissioner. There is hereby created the office of farm storage commissioner, and the commissioner of agriculture, labor and industry for the state of Montana shall be ex officio such commissioner. Such commissioner shall manage, control and direct the operation of the provisions of this act, with full and complete power to make effective the provisions of this act and the rules and regulations which he may prescribe to carry out the purposes and objects thereof.

History: En. Sec. 2, Ch. 27, L. 1929.

3592.12. Bond of commissioner. In addition to the bond required of such commissioner pertaining to the office of commissioner of agriculture, labor and industry, such commissioner shall also furnish a surety bond in the sum of \$20,000.00 conditioned upon his faithful performance of the duties imposed by the provisions of this act, the premium on said bond to be paid as a part of the general expenses of the operation of this act.

History: En. Sec. 3, Ch. 27, L. 1929.

3592.13. Powers and duties of the commissioner. The commissioner shall be vested with full and complete power to carry out the provisions of

this act, and in addition to such general powers hereby conferred, he shall have the following express powers:

First, to appoint inspectors of grain whenever petitioned so to do as provided herein, prescribe the duties of such inspectors and remove them summarily whenever said commissioner may deem it advisable;

Second, to make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable to carry out effectually the purposes hereof;

Third, he shall have full power to set up the necessary machinery to make effective the provisions of this act, such as the purchase of supplies, printing, stationery and equipment, and the appointing of clerical help and assistance, all of which expense shall be audited and paid as a part of the general expense of the administration of this act.

History: En. Sec. 4, Ch. 27, L. 1929.

3592.14. Inspectors—how appointed. Whenever 10 or more farmers having grain to inspect tributary to any market center shall petition the commissioner for the appointment of an inspector, the commissioner shall forthwith appoint such inspector, provide for the method of inspection, and require such inspector to certify all warehouse certificates for grain inspected, and certify to the commissioner all information that may be required of him by the provisions of this act, or by the rules and regulations laid down by the commissioner.

History: En. Sec. 5, Ch. 27, L. 1929; amd. Sec. 1, Ch. 96, L. 1931.

3592.15. Qualifications of inspectors. No inspector shall be appointed under the provisions of this act until a written application shall first be submitted to and approved by the commissioner showing the applicant's experience and fitness to become an inspector of grain under the provisions of this act.

History: En. Sec. 6, Ch. 27, L. 1929.

3592.16. Term of office of inspector. When appointed such inspector shall hold his office at the will of the commissioner.

History: En. Sec. 7, Ch. 27, L. 1929.

3592.17. Bond of inspectors. Any inspector appointed under the provisions of this act shall furnish to the commissioner a bond in the penal sum of \$2,000.00, conditioned upon his faithful performance of his duties under the provisions of this act and the rules and regulations prescribed by the commissioner, premiums for said bonds to be paid out of the funds provided under this act.

History: En. Sec. 8, Ch. 27, L. 1929.

3592.18. Fees for inspectors. The commissioner shall from time to time fix the fees or compensation of inspectors for their services. Such fees or compensation shall be based upon a certain sum per bushel of the grain so inspected, and shall be paid monthly by the commissioner by warrants drawn upon the fund created by the provisions of this act.

History: En. Sec. 9, Ch. 27, L. 1929.

3592.19. Applications for testing and sealing of grain. Whenever any inspector shall be appointed under the provisions of the act, any owner of

grain within his district desiring to store the same, shall make written application to the commissioner to be filed with the inspector, indicating where said grain is stored, the kind of structure in which stored, the encumbrance on said grain, if any; which application shall be signed and sworn to by the applicant. Whenever any grain is owned by more than one owner, said application shall be signed by all having an interest therein. In case such grain is mortgaged, the application for inspection shall be signed by the owner, and any certificate issued for grain owned by more than one person, or mortgaged, shall be issued in the name of such persons including the mortgagee.

History: En. Sec. 10, Ch. 27, L. 1929.

3592.20. Penalty for false application. Any person who shall state in such application any material fact known to be false and for the purpose of misleading the commissioner or the inspector, shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 27, L. 1929.

3592.21. Duties of inspector. Whenever application shall be made to the commissioner for the inspection and sealing of grain whether upon the farm or on or near any railroad right-of-way, or other suitable place, the inspector shall as soon as it is possible to do so, inspect said grain, and if said grain and the structure in which it is stored comply with the provisions of this act, and the regulations of the commissioner, the inspector shall measure and obtain the cubic feet content of the grain in the bin. Probe the grain in at least five different places so as to obtain a required amount of grain to mix and divide into two samples, he shall then number the bin and the samples to correspond, seal the bin with a seal provided by the commissioner and place on the structure a printed copy of the penalty clause provided by this act for the unlawful breaking of such seal. The inspector shall then forward to the laboratory as directed by the commissioner, one of the samples obtained from the bin. The laboratory shall issue inspection certificates in triplicate, which shall be dated, numbered and designate the owner's name, the number of sample inspected, the kind of grain, and, if mixed, the percentage of each kind, the dockage, and the moisture and protein content. As soon as inspection certificates are obtained by the commissioner he shall issue negotiable warehouse certificates in triplicate, attaching to each a copy of inspection certificate and sign the warehouse certificates over the facsimile signature of the local inspector and when so signed they shall be deemed to be issued by the proper authority of the commissioner. Inspectors shall have the right at any time to enter upon the premises where any grain is stored under the provisions of this act for the purpose of making an inspection thereof, and the acceptance of the warehouse certificate by the owner, shall be deemed consent to such entry and inspection. Inspectors appointed under the provisions of this act shall have the same powers as a notary public to take acknowledgments and administer oaths that may be required either by provisions of this act or by rules and regulations laid down by the commissioner.

History: En. Sec. 12, Ch. 27, L. 1929; amd. Sec. 2, Ch. 96, L. 1931.

3592.22. Penalty for violation of duty by inspector. Any inspector who shall wilfully certify falsely to any material fact in or concerning any warehouse certificate, or who shall wilfully certify falsely to the commissioner any material fact required to be certified under the provisions of this act, or by the rules and regulations of the commissioner, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term of not less than two and one-half or not more than five years.

History: En. Sec. 13, Ch. 27, L. 1929.

3592.23. Duty of owner respecting the care and delivery of grain stored. The owner of grain stored under the provisions of this act shall be charged with the due care of the same and shall exercise that degree of care and diligence which an ordinary and prudent man would exercise with regard to similar property of his own. The owner shall also, upon demand of the holder of such certificate, deliver said grain to the market place indicated in the application without charge to the holder. No legal demand for the delivery of said grain can be made, however, upon said owner until the maturity of the obligation for which said certificate may be pledged, or until the security shall become in any way impaired; providing, however, that the owner of said grain, in his discretion may sell said grain prior to the maturity of his obligation under this certificate.

History: En. Sec. 14, Ch. 27, L. 1929.

3592.24. Form of Warehouse certificate. The form of said warehouse certificate issued under the provisions of this act shall be prepared and approved by the commissioner, and every such certificate must embody within its written or printed terms the following:

- (1) The consecutive number of the certificate.
- (2) The date of issuance of said certificate.
- (3) A description of the structure in which the grain is stored, and the legal description of the premises where stored.
- (4) A description of the grain, giving its grade, kind, variety, dockage, protein content, and moisture content, the amount thereof to be computed from the cubical measurement thereof.
- (5) The name of the owner or owners, whether ownership is sole, joint or in trust, and the conditions of such ownership, as shown by the application.
- (6) A statement of any and all encumbrances upon said grain as reported in the application.
- (7) A statement that the grain will be delivered at elevator or on railroad; but it may be sold on track, to arrive or be consigned at the option of the owner of said grain.
- (8) The facsimile signature of the commissioner and the counter signature of the inspector.
- (9) Notation of inspection fee.

History: En. Sec. 15, Ch. 27, L. 1929.

3592.25. Warehouse certificates—how issued. All such certificates issued under the provisions of this act shall be in triplicate, the original to be delivered to the owner, one copy to be filed in the office of the commis-

sioner; and the other copy to be filed in the office of the clerk and recorder of the county in which said grain is stored. Both copies of the certificate shall have plainly printed and stamped across the face thereof, "Duplicate—No Value."

History: En. Sec. 16, Ch. 27, L. 1929; amd. Sec. 3, Ch. 96, L. 1931.

3592.26. Recording certificate. The commissioner shall file in the office of clerk and recorder of the county wherein said grain is stored, a copy of the warehouse certificate, which shall be indexed under chattel mortgages. Such filing shall be notice that the grain described therein is pledged to the redemption of an outstanding negotiable warehouse receipt.

History: En. Sec. 17, Ch. 27, L. 1929; amd. Sec. 4, Ch. 96, L. 1931.

3592.27. Waiver of locking and sealing. The locking up and sealing of any storage facility acceptable to the commissioner is hereby waived, if and when the applicant shall have filed a warehouseman's bond, as a guaranty to the carrying out of the provisions of this act. Such bond shall be passed on and approved by the commissioner.

History: En. Sec. 18, Ch. 27, L. 1929.

3592.28. Owner of grain responsible for the amount of grain stated on certificate. Whenever the amount of grain certified to on the certificate shall have been computed by cubic measurement, the amount shall be deemed to be prima facie the amount of said grain, but the actual amount shall be determined by the actual weight thereof. The owner, however, shall be responsible and liable to the holder of the certificate, for the delivery of the amount of grain indicated on said certificate by actual weight, or the value of any shortage thereon.

History: En. Sec. 19, Ch. 27, L. 1929.

3592.29. Penalty for breaking seals. Any person who shall with intent to defraud, break the seal of any structure in which grain is stored under the provision of this act, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a period of not less than one or more than two years.

History: En. Sec. 20, Ch. 27, L. 1929.

3592.30. Expenses for the administration of act—how paid—fees for inspection. The expense of the administration of this act shall be paid by the owners of the grain, and the fee collected at the time of inspection and sealing. The amount so paid shall be stated in the certificate. The fee for such inspection shall not exceed one-half cent per bushel, except that when the amount of grain offered for inspection by a single applicant is found to be less than one thousand bushels the minimum fee shall be for one thousand bushels. Such fees shall be paid to the commissioner and deposited with the state treasurer, and the fund shall be known as the department of agriculture revolving appropriation fund for grain grading, and upon such fund the state auditor shall draw warrants to pay the general expenses of this act.

History: En. Sec. 21, Ch. 27, L. 1929; amd. Sec. 5, Ch. 96, L. 1931.

3592.31. Definition of "laboratory" and "analyst." Whenever the word "laboratory" is mentioned in this act, it shall be held to mean protein

testing laboratory. Whenever the word "analyst" is mentioned in this act, it shall be held to mean protein analyst.

History: En. Sec. 1, Ch. 111, L. 1931.

3592.32. Administration of act. The commissioner of agriculture, labor, and industry, through the division of grain standards and marketing, shall be charged with the administration of this act.

History: En. Sec. 2, Ch. 111, L. 1931.

3592.33. Protein testing laboratory—chief grain inspector to control. The commissioner of agriculture shall establish, and maintain, one protein testing laboratory under the direction of the chief grain inspector, and he, shall determine the standard of analysis, controlling all other laboratories operating under the provisions of this act.

History: En. Sec. 3, Ch. 111, L. 1931.

3592.34. County protein testing laboratories—county commissioners may establish. The board of county commissioners are hereby delegated general powers to establish in their discretion within their respective counties protein testing laboratories, when the order establishing the same has been approved by the commissioner of agriculture.

History: En. Sec. 4, Ch. 111, L. 1931.

3592.35. Equipment for county laboratories—operating costs. Whenever a laboratory is established under section 3592.34, the cost of such equipment as may be required, and its installation, also the space it occupies, is to be provided by the county establishing said laboratory, providing that the commissioner of agriculture may when requested by the county commissioners of any county, where a protein laboratory has been previously established, be authorized to make arrangements with the said county commissioners of said county to retain its protein laboratory equipment, provided that the said county agrees to care for the same without any expense to the department of agriculture of the state of Montana. The state, by order of the commissioner of agriculture, may finance the operation of any such laboratory, as may be established under section 3592.34. Operating costs are held to mean and include, the compensation of the analyst in charge of the laboratory, all stationery and printed forms, supplies including chemicals and all other items that may be necessary to the proper operation, except rent and replacement of permanent equipment owned by the county.

History: En. Sec. 5, Ch. 111, L. 1931.

3592.36. Selection of analyst. The analyst in charge of any laboratory operated under the provisions of this act, shall be selected by the county commissioners, and appointed with the approval of the commissioner of agriculture.

History: En. Sec. 6, Ch. 111, L. 1931.

3592.37. Qualification of analyst. No such analyst shall be appointed under the provisions of this act, until a written application shall first be submitted and approved by the commissioner of agriculture, showing the applicant's experience in chemistry and fitness to become a protein analyst under the provisions of this act.

History: En. Sec. 7, Ch. 111, L. 1931.

3592.38. Analyst's duties. Each such analyst in charge of a laboratory, shall test all samples submitted to him for analysis and issue certificates to the person submitting same showing the percentage of protein content.

History: En. Sec. 8, Ch. 111, L. 1931.

3592.39. Form and contents of protein certificate. The form of protein certificate issued under the provisions of this act, shall be prepared and approved by the commissioner of agriculture, and every such certificate shall embody within its written or printed terms the following:

- (a) The consecutive number of the certificates.
- (b) That it is issued by the county making same, under authority of the department of agriculture, labor, and industry.
- (c) The place of issue and the date.
- (d) The kind of grain.
- (e) The place from which the sample was taken.
- (f) The amount of sample and if a carload, the car number and initials.
- (g) A statement of the amount of protein in percentage.
- (h) A statement printed or stamped on the face of the certificate, showing the sample to have been submitted in a suitable air tight container, or otherwise as the case may be.
- (i) The name and title of the analyst.

History: En. Sec. 9, Ch. 111, L. 1931.

3592.40. Fees for protein tests—disposal of proceeds. The commissioner of agriculture shall fix the fees for testing grain for protein content, and such fees shall be collected by the analyst when tests are made, and remitted to the commissioner of agriculture once each month, and deposited with the state treasurer in a fund known as the department of agriculture revolving appropriation fund for grain grading, out of which all operating expenses of this act are to be paid. On July first each year, the commissioner of agriculture shall determine the amount of surplus, if any, accumulated from fees remitted by each laboratory and seventy-five per cent of said surplus from each county shall be paid to each county upon claims duly approved by the board of examiners and warrant of state auditor upon state treasurer, and twenty-five per cent shall be retained by the department of agriculture revolving appropriation fund to apply on the administration costs of this act.

History: En. Sec. 10, Ch. 111, L. 1931.

3592.41. Powers of commissioner of agriculture. The commissioner of agriculture shall be vested with full and complete power to carry out the provisions of this act, and in addition to such general powers hereby conferred he shall have the following express powers;

- (a) To open each laboratory for operation only such years as, in his discretion, marketing conditions require a knowledge of the protein content, to enable the owners of grain to obtain the full market value thereof.
- (b) To make and promulgate such rules and regulations not inconsistent herewith, as may be necessary or desirable to carry out effectively the purpose of this act.

(c) He shall have full power to set up the necessary machinery to make effective the provisions of this act such as the purchase of supplies, printing stationery and equipment and the appointment of clerical help and assistance all of which expense shall be audited and paid as part of the general expense of the administration of this act.

History: En. Sec. 11, Ch. 111, L. 1931.

3592.42. Protein test to be made of all wheat delivered grain warehousemen—maner of making test—result—fee. Each public grain warehouseman as defined by the laws of the state shall take a sample from each load of wheat delivered to his warehouse and preserve such sample in an air-tight container with the owner's name thereon. As hauling is completed by each owner the several samples taken from all the loads of any one owner shall be mixed thoroughly together, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties or grades shall be segregated and separate containers provided for each. A one pint portion of the composite sample shall be submitted to the state grain laboratory at Great Falls, Harlowton, or Bozeman and the balance shall be held in the owner's container. In the event of dissatisfaction on the part of warehousemen or owner either party shall have the right to a final appeal to the state laboratory.

In case of an appeal a one pint portion of the remainder of the owner's sample shall again be submitted to the state laboratory with a statement of facts of the appeal and a final test in duplicate shall be made by the laboratory. The certificate of the state laboratory of such test shall be final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee of fifty cents (\$0.50), for each protein test may be made, to be deducted and paid at the time of final settlement; provided, however, upon written request of owner, no protein test need be made upon said owner's wheat.

History: En. Sec. 1, Ch. 160, L. 1935.

3592.43. Penalty for violation. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than three hundred dollars (\$300.00) and not more than five hundred dollars (\$500.00) for each offense.

History: En. Sec. 2, Ch. 160, L. 1935.

3592.44. Farm storage supervisor. The commissioner of agriculture, labor, and industry of the state of Montana, hereinafter called the "commissioner," is hereby empowered, and it is his duty to carry out the provisions of this act. In so doing he shall appoint a supervisor of public farm storage warehouses, hereinafter called the "supervisor." The commissioner is hereby given full and complete authority to make the necessary rules and regulations for carrying out the provisions of this act. The chief of the grain division in the department of the commissioner of agriculture shall be the supervisor of this act.

History: En. Sec. 1, Ch. 174, L. 1931.

3592.45. Farm storage public warehouseman defined—license—fee—disposal of fees. All persons, firms, corporations or associations, now or here-

after engaged in the business of buying, selling or storing grain in the state of Montana, and licensed by the commissioner to conduct such business, may, upon application in such form as shall be described by the commissioner, receive a license as farm storage public warehousemen in compliance with the provisions of this act, and the rules and regulations of the commissioner. All licenses issued under the provisions of this section shall run for one (1) year, and expire on May 31st of each year. The license fee, which must accompany the application is hereby fixed at five dollars (\$5.00) for each warehouse operated, except that where more than one (1) warehouse operated by the same person, firm, corporation or association is located in one (1) place only one (1) license need be applied for. The fees collected under the provisions of this act shall be paid into the state treasury and credited to the department of agriculture, labor, and industry revolving fund for grain grading.

History: En. Sec. 2, Ch. 174, L. 1931.

3592.46. Bond of applicant for license—report of licensees. Before any license shall be issued to an applicant under this act there shall be filed with the commissioner a bond with corporate surety in such amount as shall be fixed by the commission, but in no case shall the amount be less than five thousand dollars (\$5,000.00). Such bond shall cover the period of the license and shall run to the state of Montana for the benefit of all persons holding special bin farm warehouse receipts issued under the provisions of this act. This bond shall be conditioned upon the faithful performance of the applicant in complying with the provisions of this act, and all rules and regulations of the commissioner issued hereunder. The commissioner is authorized to require the filing of additional bond with corporate surety in an amount necessary to protect the holders of special bin farm warehouse receipts issued in pursuance to the provisions of this act.

Every licensee hereunder shall render to the commissioner a report at the close of each month, in such form as the commissioner shall prescribe, setting forth the number of each special bin farm warehouse receipt issued, the name of the person to whom issued, the date, the gross, dockage and net bushels, kind and grade of grain, character of the bin or granary and the number of the seal applied, or other pertinent information which the commissioner may require. From such monthly reports the commissioner shall determine the amount of bond necessary for the protection of special bin farm warehouse receipt holders, and in no case shall the bond be less than the market value of such grain on the last day of the month for which the report is made.

History: En. Sec. 3, Ch. 174, L. 1931.

3592.47. License to be posted. All licenses issued pursuant to this act shall be posted in a conspicuous place in the warehouse of the applicant, and no person, firm, corporation or association shall operate as a farm storage public warehouseman until such license is procured and posted as provided herein. Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 174, L. 1931.

3592.48. Duties of farm storage public warehouseman—form of receipts.
Any farm storage public warehouseman licensed under this act shall be authorized, at his discretion, to issue special bin farm warehouse receipts, which receipts shall be in the name of the elevator company operated by said warehouseman and in the form herein described:

SPECIAL BIN FARM WAREHOUSE RECEIPT

ELEVATOR COMPANY, 19....., Montana.

The following described grain has been received for storage under the provisions of Chapter S. L. 1931, from

Name of Owner (Custodian)

Gross	Dockage	Net	Bushels
of	Kind of grain	grade and dockage	

located at

Legal description of premises where grain is stored and stored in

description of granary

and such granary has been sealed with the seal of the undersigned, number

The undersigned elevator company hereby agrees upon surrender of this receipt to make delivery of the grain herein described in net bushels, or if unable to make delivery of the identical grain, to deliver a like quantity of the same grade as represented by this receipt, in net bushels. Upon the surrender of this receipt for delivery in carload lots the holder hereof agrees to pay to the issuing licensee the legal handling charges. The above described grain has been stored to May 31st, following the date of issuance hereof, except in the case of shelled corn, when the date of expiration shall be on March 31st following. Said grain has been insured for the account of the owner and the premium thereon shall be considered as an advance and collected from the holder hereof at the time of cancellation. The custodian of the grain covered by this receipt agrees to deliver the grain to the elevator of the licensee upon demand. Refusal or failure to so deliver empowers the licensee to take possession and transport the grain to his elevator. The charges of such transporting shall be considered as an advance and collected at the time of cancellation of this receipt.

Gross Bu.....Elevator Company.

Dockage Bu.....Manager.

Net Bu.....

No other form of special bin farm warehouse receipt may be issued, nor can any other language be used than that stated in the contract of storage in the above warehouse receipt.

All such warehouse receipts issued under the provisions of this act shall be in triplicate, the original receipts to be printed on white and the two

duplicates upon tinted paper, such originals to be delivered to the owner, one of the duplicate copies to be retained by the licensee and the other to be filed in the office of the county clerk and recorder of the county in which said grain is stored, which receipts shall be indexed as a chattel mortgage and for the filing thereof no fee shall be collected by any county clerk and recorder. Such filing shall be noticed that the grain described in such receipt is pledged to the redemption of the same. Any assignment of said receipt may also be filed and properly endorsed upon the receipt and shall when filed have the same force as the filing of an assignment of chattel mortgage. Both copies of receipts shall have plainly printed or stamped across the face thereof "Duplicate Receipt—No Value."

History: En. Sec. 5, Ch. 174, L. 1931.

3592.49. Application for special bin farm warehouse receipt. The owner of any grain desiring a special bin farm warehouse receipt shall make application therefor to the licensee, in such form as the commissioner shall prescribe, and which shall contain the following specific contract: "The undersigned applicant hereby agrees if a special bin farm warehouse receipt is issued under this application, to give to the grain covered by such receipt the same degree of care and diligence which an ordinary prudent man would exercise to similar property of his own, and to make delivery of the grain covered by said receipt upon demand of the licensee to the elevator of the licensee issuing the receipt, without cost to said licensee."

Prior to the issuance of any special bin farm warehouse receipt it shall be the duty of the licensee carefully to inspect the bin or granary in which the grain is stored to determine the availability for the warehousing of grain; to procure a fair average sample of such grain by the use of a standard grain probe, and thereafter to seal the bin or granary with a ball type seal, bearing the name of the elevator company and the seal number, which numbers are to run consecutively. The sample drawn from the bin or granary is to be placed in an air-tight container and taken to the elevator for inspection; a portion of said sample not less than one (1) pint, shall be kept in an air-tight container, properly marked with the name of the owner and his location, to be held for a period of time not less than one (1) month from the time of inspection.

Any licensee hereunder may make periodic inspections of the bins of granaries upon which such licensee has issued special bin farm warehouse receipts, and for that purpose may enter upon the premises where said bin or granary is located and may break the seal thereon, recording the number of the seal broken and the number of the new seal applied, together with the date, and shall send a report in form prescribed therefor to the commissioner, retaining a copy for his own file.

History: En. Sec. 6, Ch. 174, L. 1931.

3592.50. Inspection of books and records. It shall be the duty of the supervisor to inspect, or cause to be inspected, all books, records and accounts of licensed farm storage public warehousemen at frequent intervals, to determine that the provisions of this law and the rules and regulations of the commissioner are being complied with. In so doing, the said supervisor or his agents shall have full and complete authority to demand and pro-

cure the production of all books, records, documents, memoranda or accounts, pertaining to such licensee in connection with farm storage.

The commissioner or his agents, shall have the right to inspect a bin or granary upon which a special bin farm warehouse receipt has been issued and for such purpose may break the seal upon any such bin or granary. After such inspections, the bin or granary shall be resealed with a seal bearing the name of the department of agriculture, labor, and industry of Montana, together with a number, and the number of such seal shall be made a matter of record in the office of the licensee applying the original seal and in the office of the commissioner.

History: En. Sec. 7, Ch. 174, L. 1931.

3592.51. Duty of custodian. The custodian of grain stored under special bin farm warehouse receipts shall be charged with the due care of such grain and shall exercise that degree of due care and diligence which an ordinary prudent man would exercise to similar property of his own.

The custodian shall also upon demand of the licensee issuing the warehouse receipt deliver said grain to the elevator of the licensee without charge.

History: En. Sec. 8, Ch. 174, L. 1931.

3592.52. Warehouse receipts—cancellation. For the purpose of cancellation of any special bin farm warehouse receipt, it will be necessary that the holder thereof present the same to the issuing licensee for cancellation. The licensee shall stamp across the face of said receipt the words, "Surrendered and cancelled."

The licensee shall notify the county clerk and recorder of the county in which the duplicate receipt is filed, to discharge any cancelled receipt of record, and such county clerk and recorder is hereby required to cancel the same, without charge, upon such notice from the licensee. All original special bin farm warehouse receipts so cancelled as above by the licensee, shall be retained in the files of his office and a permanent record of such receipt so cancelled shall be kept; such record to show the name of the person or persons to whom the receipt was issued, the number of the receipt, the date of cancellation, and when the receipt cancelled is one surrendered as paid, the name of the person so surrendering and cancelling.

At any time during the life of a special bin farm warehouse receipt that the issuing licensee believes that the integrity of such receipt so demands such licensee is hereby authorized to demand delivery of said grain from the custodian thereof, and such custodian shall, upon receipt of notice to deliver, forthwith comply with such notice. Upon the failure or refusal on the part of the custodian to make delivery of grain covered by a special bin farm warehouse receipt as provided in this act, the licensee is hereby empowered to take possession of such grain and transport the same to his elevator. The cost of transporting the grain to the elevator shall be considered as advance and collected from the receipt-holder at the time of cancellation. Such possession may be taken, provided that there shall be no charge for storage thereon prior to the expiration of the storage period provided for in the receipt.

Failure on the part of the custodian to make delivery as directed shall be considered a misdemeanor.

History: En. Sec. 9, Ch. 174, L. 1931.

3592.53. Penalty for breaking seal or removing or damaging stored grain. Any person, except the licensed farm storage warehouseman who has applied the same, or his successors, or any employee of the commissioner, who shall break the seal of any bin wherein grain is stored under the provisions of this act, or who shall break or enter the bin wherein said grain is stored, or who shall damage, remove or destroy any grain stored and sealed under this act, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than one (1) year, or in the state penitentiary for not less than one (1) year, nor more than three (3) years, or by a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00), and it shall be the duty of the commissioner, upon complaint or upon his own motion, to investigate any and all alleged violations of this act, and to prosecute the violators thereof.

History: En. Sec. 10, Ch. 174, L. 1931.

3592.54. Administration and enforcement of act. The provisions of this act shall be administered and enforced by the commissioner of agriculture of the state of Montana.

History: En. Sec. 1, Ch. 164, L. 1935.

3592.55. Definitions. The following terms and words whenever used in this act, or in the rules and regulations later promulgated by the commissioner shall have the meaning as indicated.

(a) The word "commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The words "warehouseman" or "person" shall mean dealer, shipper (except grower), society, association, organization, corporation or their agents or representatives.

(c) The word "beans" shall mean all varieties of the bean family (except green beans) whether grown or purchased for seed, feed or human consumption.

(d) The words "storage" or "warehousing" shall mean any method by which beans are held for any party, other than direct ownership, by the party doing the storing.

History: En. Sec. 2, Ch. 164, L. 1935.

3592.56. Scope of act. This act shall cover all transactions in beans and they shall not be handled, purchased, sold or stored under the provisions of any grain act.

History: En. Sec. 3, Ch. 164, L. 1935.

3592.57. License required of persons warehousing beans—fee—disposal of moneys—expiration date. All persons engaged in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale or storage either within or without the state of Montana shall, before engaging in such business, procure a license from the commissioner and shall pay a license fee to the department of

agriculture of Montana in the sum of fifteen dollars (\$15.00), which shall be deposited with the treasurer of the state of Montana and credited to the special fund known as the "revolving fund of the division of horticulture" to be expended by the chief of the said division upon approval of the treasurer of the state of Montana, and all moneys so deposited shall be held subject to the uses of the chief of the division of horticulture for the purpose of carrying out the provisions of this act. Said licenses shall be renewed annually and the prescribed fee shall be paid annually. All licenses shall be issued for the fiscal year or fraction thereof and ending June 30th next following.

History: En. Sec. 4, Ch. 164, L. 1935.

3592.58. Form of application for license—qualifications—appeal on refusal to grant license. The commissioner shall prescribe forms for application for such licenses and shall require from the applicant such facts and information as he may determine and as may seem appropriate to carry out the provisions of this act. The applicant must satisfy the commissioner as to his qualifications, warehouse and storage facilities, experience and financial ability to carry on the business of buying, selling, warehousing and storing, and upon furnishing evidence thereof satisfactory to the commissioner he may be granted or refused a license. Provided that if license is refused by the commissioner appeal may be made in accordance with the provisions in sections 2443.5, 2443.9, 2443.10, 2443.11 and 2443.12 of these codes.

History: En. Sec. 5, Ch. 164, L. 1935.

3592.59. Bond of applicant—conditions—fire insurance. Every person applying for a license to engage in such business of buying, selling, warehousing or storing beans in accordance with this act shall, as a condition precedent to the granting thereof, execute and file with the commissioner a good and sufficient surety bond in the sum of five thousand dollars (\$5,000.00) to the state of Montana, executed by a responsible surety company licensed to do business in this state, to be approved by the commissioner, conditioned upon the faithful performance of his obligations as a bean dealer or warehouseman under the laws of this state and as prescribed in this act, and of such additional obligations as may be assumed by him under contract with the respective depositors of the beans with him. The commissioner may from time to time require additional bond under penalty of revoking the license. Said bond shall otherwise be in such form and shall contain such additional conditions as the commissioner may prescribe to carry out the purposes of this act, and may, in the discretion of the commissioner, include the requirements of fire insurance.

History: En. Sec. 6, Ch. 164, L. 1935.

3592.60. Suit on bond. Any person injured by the breach of any obligation to secure which a bond is given, as in this act provided, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained in such breach, or where more than one (1) person has been so injured, the action may be brought in the name of the state of Montana on behalf of all such injured persons.

History: En. Sec. 7, Ch. 164, L. 1935.

3592.61. Fee for inspecting warehouse. The commissioner shall charge, assess and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this act to be paid to the state department of agriculture and deposited as provided in section 3592.57, provided that such fee shall not exceed ten dollars (\$10.00) per annum.

History: En. Sec. 8, Ch. 164, L. 1935.

3592.62. Records of bean dealer—contents—inspection—receipt. Every dealer in beans shall make and keep a full and complete record of all beans handled by him covering the following facts:

- a. Name and address of the producer or shipper.
- b. Date of receipt.
- c. Kind, quantity, quality and grade of beans received.
- d. Agreed purchase price if purchased.
- e. Agreed storage price if stored.
- f. Agreed commission charged if consigned.
- g. Date of sale, to whom sold and price.
- h. Date and details of settlement with vendor or consignor.

The above records shall be open to the confidential inspection of the commissioner or his authorized agents at all times. Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the commissioner as provided in section 3592.63.

History: En. Sec. 9, Ch. 164, L. 1935.

3592.63. Rules and regulations to be prescribed by commissioner. The commissioner shall prescribe such rules and regulations as he may deem necessary for the safe conduct of the business referred to in this act, including a scale of storage charges and storage receipts and to that end may, if he deems it necessary, require reports from any warehouseman or person receiving stored beans on blanks or forms that may be prepared by the commissioner.

History: En. Sec. 10, Ch. 164, L. 1935.

3592.64. Grading before storing required—specification on receipt. All beans accepted for storage shall first be graded according to the standards of the United States department of agriculture and the grade so established shall be noted and specified upon the warehouse receipt issued for such beans.

History: En. Sec. 11, Ch. 164, L. 1935.

3592.65. Storage constitutes bailment—duty to keep beans in storage. The storage of beans under the terms of this act shall constitute a bailment and upon the return of the warehouse receipt properly endorsed, and upon the payment or tender of all advances and legal charges, the holder of such warehouse receipt shall be entitled to, and it shall be compulsory for the warehouseman to deliver the identical grade and amount of beans so placed in storage. Every dealer, under the provisions of this act, shall maintain at all times in original storage beans equal in amount and grade to all storage certificates issued, unless authorized in writing by holders of receipts or by the commissioner, to move to other storage, and failure to do so shall constitute a conversion.

History: En. Sec. 12, Ch. 164, L. 1935.

3592.66. Records of warehousemen—reports. Every warehouseman or person operating under this act shall keep in a place of safety complete and correct records of all beans stored by him and of all beans withdrawn from storage; of all warehouse receipts issued by him; and of all the receipts returned to and cancelled by him; and shall make such reports to the commissioner concerning such matters as may be required by the commissioner by rules and regulations established by him.

History: En. Sec. 13, Ch. 164, L. 1935.

3592.67. Enforcement of act—investigations—hearings—orders of commissioner—appeals. For the purpose of enforcing the provisions of this act, the commissioner upon his own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association or corporation assuming or attempting to act as such, shall have authority to, and must make any and all investigations he deems necessary, and he shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage and transportation or any other facilities or places in which beans are kept, stored, handled or transported. If the commissioner, upon investigation, shall have reason to believe that any dealer is not acting in accordance with the provisions of this act, or upon the filing of a verified complaint against any dealer, it shall be the duty of the commissioner to have personal service made upon said dealer, or to mail by registered mail a complaint, or a copy of the verified complaint against said dealer, and in the event the dealer fails to make formal adjustment or settlement of the charges set forth therein, to the satisfaction of the commissioner, the commissioner shall give notice of the time and place of a formal hearing thereon. Notice of any hearing shall be given at least twenty (20) days prior thereto and said hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation; and all parties disobeying the orders of subpoenas of said commissioner shall be guilty of contempt and shall be certified to any district court of the state, which court shall punish any such contempt. Copies of records, inspection certificates, certified reports and all papers on file in the office of the commissioner shall be prima facie evidence of the matters therein contained.

At the time and place appointed for such hearing the commissioner shall hear all parties and their evidence and thereupon the commissioner shall dismiss the charges, or suspend the license of the dealer for a specified time, or revoke the same, or make such other appropriate order as he may deem just and proper; any order shall specify the effective date thereof and any order other than the one suspending or revoking a license shall automatically suspend such license until such order is complied with. Provided, that an appeal may be made from the decision of the commissioner

according to the provisions of sections 2443.5, 2443.9, 2443.10, 2443.11 and 2443.12 of these codes.

History: En. Sec. 14, Ch. 164, L. 1935.

3592.68. Penalties for doing business without license and for other violations. Any person who shall engage in or carry on any business or occupation for which a license is required by this act without first having obtained a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked or expired, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense. Any person who shall otherwise violate any of the provisions of this act, or shall by any manner or means convert to his own use, or that of another, any beans so stored or accepted for storage shall, if the value of such converted beans exceed five hundred dollars (\$500.00), be deemed guilty of a felony; and if the value is less than five hundred dollars (\$500.00) be deemed guilty of a misdemeanor, and in either case upon conviction, shall be punished by fine or imprisonment, or both, as otherwise provided by law.

History: En. Sec. 15, Ch. 164, L. 1935.

3593. Definition of agricultural seeds. The term "agricultural seeds" or "agricultural seed" as used in this act shall include the seeds of red clover, white clover, alsike clover, alfalfa, Kentucky blue-grass, timothy, brome-grass, orchard-grass, redtop, meadow fescue, oat-grass, rye-grass, and other grasses and forage plants, corn, flax, rape, wheat, oats, barley, rye, buckwheat and other cereals, and when the term "agricultural seed" or "agricultural seeds" is used in this act, it shall be construed to mean such seed when sold, or offered or exposed for sale, or had in possession with intent to sell, within this state for the purposes of seeding in this state.

History: En. Sec. 1, Ch. 12, L. 1913; re-en. Sec. 3593, R. C. M. 1921.

3594. Labeling of agricultural seed. The owner or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the preceding section, which contains one pound or more of such agricultural seeds, whether in package or in bulk, shall affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy not smaller than eight point heavy gothic capitals, such label containing a statement specifying:

1. The commonly accepted name of the kind or kinds of such agricultural seed.

2. The approximate percentage of germination of such agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of such hard seeds shall be stated separately from the germination; with the provisions that any portion or all of them may be added to the percentage of germination.

3. The approximate percentage by weight of purity; meaning the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.

4. The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in such agricultural seeds.

5. The approximate total percentage by weight of weed seeds; the term "weed seeds" as herein used, being defined as the noxious weeds listed in sub-division 6 of this section, and all seeds not listed in section 3593 as agricultural seeds.

6. The name and approximate number per ounce of each kind of the seeds of the following named noxious weeds: Quack grass, fanweed or French weed, wild oats, dodder, Canada thistle and wild mustard, if any such are found in such agricultural seeds in quantities in excess of one in portions of the seed equal to the following:

(a) Five (5) grams of small seeds defined as timothy, red top, tall meadow oat grass, orchard grass, crested dogstail, Canada blue grass, Kentucky blue grass, fescues, brome grasses, perennial and Italian rye grass, western rye grass, crimson clover, red clover, white clover, alsike clover, sweet clover, alfalfa and all other grasses and clovers not otherwise classified;

(b) Twenty-five (25) grams of medium sized seeds defined as millets, rape, flax, and other seeds not specified in (1) or (3) of this sub-section.

(c) One hundred grams of wheat, oats, rye, barley, buckwheat, vetches and other seeds as large or larger than wheat.

7. The full name and address of the seedsman, importer, dealer or agent or of other person or persons, firm or corporation selling, offering, or exposing the said agricultural seed for sale.

8. Mixtures of agricultural seeds which contain not more than two kinds of such seeds in excess of five per centum (5%) by weight of each, when sold, offered or exposed for sale as mixtures, shall have affixed thereto, in a conspicuous place on the exterior of the container of such mixture of seeds, a plainly written or printed tag or label, in the English language, stating:

(a) That such seed is a mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five per centum (5%) by weight of the total mixture.

(c) Approximate percentage by weight of weed seeds as defined in sub-division 6 of this section.

(d) The name and approximate number per ounce of each kind of the seeds or bulblets of the noxious weeds listed in sub-division 6, of this section, which are present singly or collectively in excess of one seed or bulblet in each fifteen (15) grams of such mixture.

(e) Approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five per centum (5%) by weight, together with the month and year said seed was tested.

(f) Full name and address of the vendor of such mixture.

History: En. Sec. 2, Ch. 12, L. 1913; re-en. Sec. 3594, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1929.

3595. Law not applicable to what seed. The provisions concerning agricultural seed contained in this act shall not apply to:

1. Any person selling agricultural seeds direct to merchants or farmers, to be cleaned or graded before being offered for sale for the purpose of seeding, and plainly marked on the outside of container "not clean seed."

2. Agricultural seed marked plainly on the outside of container "not clean," and held or sold for export outside of the state only.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921.

3596. Violation of law a misdemeanor—penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars (\$100.00) and costs of such prosecution, and upon the conviction of the second or any subsequent offense shall be fined not more than five hundred dollars (\$500.00) and costs of such prosecution. Provided, however, that no prosecution under this act shall be instituted except in the manner following: When said Montana grain inspector laboratory shall find by its examinations, analyses, or tests that any person, firm or corporation has violated any of the provisions of this act, it shall give notice of such violations to the vendor or consignee of said lot of seed and at the same time mail a copy of such notice to the person, firm or corporation whose tag or label was found affixed thereto. The commissioner of agriculture of the state of Montana shall also be notified of such violation and it shall be the duty of said commissioner of agriculture to designate a time and place for a hearing. This hearing shall be private and the person or firm involved shall have the right to introduce evidence either in person, by agent or attorney. If, after said hearing, or without such hearing, in case said person fails or refuses to appear, the said commissioner of agriculture decides that the evidence warrants prosecution, he shall furnish the attorney general with all the evidence in his possession pertaining to said violation. At the presentation of said evidence of violation, it shall be the duty of the attorney general to proceed with prosecution as provided in section 3602 this code.

History: En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R. C. M. 1921; amd. Sec. 2, Ch. 110, L. 1929.

3597. Inspection by director of state grain and seed laboratory. The director of the state grain and seed laboratory of the Montana agricultural experiment station, by himself, his agent or agents, shall inspect, examine, or make analyses of and test seeds sold, offered, or exposed for sale in the state, at such time and place and to such an extent as he may determine. The said director of the state grain and seed laboratory of the Montana agricultural experiment station, or by his agent or agents, shall have free access at all reasonable hours upon and into any premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R. C. M. 1921.

3598. Employment of agents—salaries and expenses. The director of the state grain and seed laboratory, under the direction of the director of the Montana experiment station, may employ such agent or agents as may be deemed necessary to carry out the provisions of this act, and the salaries and expenses of such agents shall be paid out of moneys appropriated for the state grain and seed laboratory of the Montana agricultural experiment station.

History: En. Sec. 6, Ch. 12, L. 1913; re-en. Sec. 3598, R. C. M. 1921.

3599. Samples may be sent to laboratory for tests. Any citizen of the state of Montana, in accordance with the regulations prescribed by the Montana agricultural experiment station, and by prepaying the transportation charges, may send samples or a sample of seed to said grain laboratory of the Montana agricultural experiment station for examination, analysis, and tests, and such examinations, analyses, or tests shall be reported upon free of charge.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R. C. M. 1921.

3600. Certificate of test presumptive evidence. The certificate of the Montana agricultural experiment station, giving results of any examinations, analyses, or tests of any seed samples made under the authority of said Montana agricultural experiment station, shall be presumptive evidence of the facts therein stated.

History: En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R. C. M. 1921.

3601. Duty of experiment station on violations of act. When said Montana agricultural experiment station shall find by its examinations, analyses, or tests, that any person, firm, or corporation has violated any of the provisions of this act, it shall transmit the fact so found to the attorney general or to the county attorney of the county in which the offense is committed.

History: En. Sec. 9, Ch. 12, L. 1913; re-en. Sec. 3601, R. C. M. 1921.

3602. Prosecutions by attorney general and county attorneys. It shall be the duty of the attorney general or in his discretion he may act through the county attorney of the county in which said violation occurred, to prosecute all persons, firms, or corporations violating any of the provisions of this act, when evidence thereof has been duly presented by the Montana grain inspection laboratory, of the Montana agricultural experiment station through the commissioner of agriculture, as provided in section 3596 of this code.

History: En. Sec. 10, Ch. 12, L. 1913; re-en. Sec. 3602, R. C. M. 1921; amd. Sec. 3, Ch. 110, L. 1929.

3602.1. Purpose of act. The purpose and object of this act is to aid, assist and facilitate any loaning corporation, association or agency created by or under authority of the acts of the Congress of the United States for the purpose of aiding agriculture, in loaning money upon the security, in whole or in part, of grain stored on farms or other suitable places, and to aid, assist and facilitate the owners of said grain to obtain loans from the said corporations, associations or agencies.

History: En. Sec. 1, Ch. 111, L. 1933.

3602.2. Appointment of sealer of grain by farm storage commissioner.

In addition to the powers conferred upon the farm storage commissioner by sections 3592.10 through 3592.30, the said farm storage commissioner may, upon the request of any such corporation, association or agency, appoint a person or persons designated by it as a sealer or sealers of grain and when so appointed he, or they, shall serve without pay and hold office at the will of the said commissioner. Said sealer or sealers appointed under the terms of this act shall exercise the duties herein prescribed only when the owner of the grain to be sealed has obtained, or has applied for, a loan from such corporation, association, or agency, secured, or to be secured, wholly or in part by a mortgage upon such grain.

History: En. Sec. 2, Ch. 111, L. 1933.

3602.3. Certificate of sealer—contents—filing—sealing of grain container. Whenever requested by the owner of any grain who has obtained or applied for a loan from any such corporation, association or agency, which loan has been, or is to be, secured wholly or in part by a mortgage upon said grain, the said corporation, association, or agency concurring in said request, the sealer shall ascertain the kind of grain which the owner has in store on his farm or at any other suitable place, and the quantity thereof, which shall be determined in the presence of the owner, and said sealer shall at the time of sealing the same make a certificate in triplicate showing the name and address of the owner, the amount of grain stored, the place where stored, a description of the building, room or container in which it is stored, the quantity stored, and that the grain and quantity shown were sealed by him in the building, room or container described. The certificate must also bear a signed statement by the owner that he requested the sealing to be done, that he was present at the time of the sealing, that the matters and things stated in the certificate are true of his own knowledge, that the grain was sealed in his presence, and that he is the sole owner of the grain. If there be more than one owner the statement must be signed by each of the owners. Blank certificates shall be furnished by the farm storage commissioner, and one of said executed certificates shall be filed in the office of the farm commissioner, one shall be delivered to the owner of the grain and the other to the said corporation, association, or agency from which the loan has been, or will be obtained. The sealer must, at the time the said certificate is executed, seal the building, room or container containing said grain with seals provided by the farm storage commissioner.

History: En. Sec. 3, Ch. 111, L. 1933.

3602.4. Filing fee of commissioner—use of funds. The farm storage commissioner shall collect the sum of fifty cents for filing the certificate in his office and the funds so derived shall be used for the purpose of providing blank certificates and seals for the use of the sealers and other expenses in the administration of this act.

History: En. Sec. 4, Ch. 111, L. 1933.

3602.5. Breaking of seals or removal of grain constitutes felony. Any person who shall wilfully break any of said seals so affixed by the sealer

or wilfully remove the grain, or any part thereof, in any manner from the building, room or container wherein it is stored and sealed, except by authority in writing granted by the corporation, association or agency to which said grain is, or is to be, mortgaged, shall be deemed guilty of a felony, and upon conviction be punished by imprisonment in the Montana state prison for a period of not less than one year nor more than five years, or a fine of not to exceed five thousand dollars, or both.

History: En. Sec. 5, Ch. 111, L. 1933.

3602.6. Seizure of sealed grain—notice to commissioner. The foregoing sections shall not apply to any officer seizing said grain under process from a court of competent jurisdiction nor to any person or his agent who may seize the same under or by virtue of a lien that is prior to the lien of the mortgage of the corporation, association or agency; providing, further, that such officer, person or agent shall immediately notify the farm storage commissioner, stating under what authority he acts and that he has seized said grain, whereupon said commissioner shall immediately notify said corporation, association or agency thereof.

History: En. Sec. 6, Ch. 111, L. 1933.

3603. Harmful barberry—traffic in or permitting to exist unlawful. It shall be unlawful for any person, firm, or corporation to sell, offer for sale, barter, give away, exchange, deliver, ship, transport, receive, or accept for shipment or transportation, plant, or permit to exist on his or its premises in the state of Montana, any plant of the harmful barberry.

History: En. Sec. 1, Ch. 40, L. 1919; re-en. Sec. 3603, R. C. M. 1921.

3604. Duty of state board of horticulture to exterminate—proceedings. It shall be the duty of the state board of horticulture, or its duly authorized inspectors, to enforce the provisions of this act, and they are hereby empowered to cause to be eradicated any such harmful barberry plants found growing anywhere in the state. If the owner of the land on which such harmful plants are found growing shall fail or refuse to eradicate such plants, within ten days after receiving a written notice to that effect from a horticultural inspector, said inspector shall proceed to have such harmful barberry plants eradicated and destroyed wherever they may be found growing. As soon as the horticultural inspector has had such harmful barberry plants eradicated and destroyed, he shall make out a statement in duplicate of the actual cost and expense incurred by him in eradicating or destroying such harmful barberry plants. One of such statements shall be transmitted to the landowner affected by the work, and the other shall be filed in the office of the treasurer of the county wherein such land is situated. The treasurer shall place such amount so indicated in such statement, on the tax duplicate against the land of the landowner affected by such work, and such amount so entered shall be collected in the same manner and at the same time as taxes are collected, and when so collected shall be paid by the treasurer to the state board of horticulture, which shall remit to the state treasurer, to be added to the appropriation for the use of the state board of horticulture.

History: En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R. C. M. 1921.

3605. "Harmful barberry" defined. The term "harmful barberry," as used in this act, shall be construed to apply to any species of *Berberis*, and, as hereinafter provided for, to *Mahonia*, which are susceptible to infection by *Puccinia graminis*, commonly called black-stem rust of grain, but not including Japanese barberry (*B. thunbergii*), which does not propagate the rust.

History: En. Sec. 3, Ch. 40, L. 1919; re-en. Sec. 3605, R. C. M. 1921.

3606. Provisions of act made applicable to Mahonia. The state board of horticulture is hereby empowered to apply the provisions of this act to species of *Mahonia*, whenever in its judgment the necessity arises.

History: En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R. C. M. 1921.

3607. Violation of act a misdemeanor—penalty. Any person, firm or corporation which shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not less than ten dollars and not more than twenty-five dollars for each offense.

History: En. Sec. 5, Ch. 40, L. 1919; re-en. Sec. 3607, R. C. M. 1921.

3608. Division horticulture—duties. The department of agriculture, labor and industry, through the division of horticulture, shall enforce all of the laws of the state of Montana now in force or hereafter enacted, relating to the protection and regulation of the industry of horticulture in the state of Montana.

History: En. Sec. 37, Ch. 216, L. 1921; re-en. Sec. 3608, R. C. M. 1921.

3608.1. Commissioner of agriculture to enforce hay grading law. The commissioner of agriculture, labor and industry shall, through the division of horticulture, enforce the provisions of section 4229 and section 4239 governing the grading and inspection of hay; promulgate such rules and regulations as are necessary for the enforcement thereof and provide for an inspection fee covering the expense of such inspection.

History: En. Sec. 1, Ch. 83, L. 1935.

3609. Horticultural districts. For the convenient administration of the laws of the state relative to the industry of horticulture, the commissioner of agriculture may divide the state into horticultural districts, grouping the several counties in such manner as he may deem expedient.

History: En. Sec. 38, Ch. 216, L. 1921; re-en. Sec. 3609, R. C. M. 1921.

3610. Destruction of fruit pests—use of crates. For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be posted in three

conspicuous places in each county in the state, one of which shall be at the county court house thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained fruit or nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators.

History: En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R. C. M. 1921.

3611. Inspectors of fruit pests—appointment and duties. The commissioner of agriculture shall appoint inspectors of fruit pests in such number as he may deem necessary for the proper administration of the horticulture laws. Said inspectors shall be selected with reference to their knowledge and practical experience in horticulture. It shall be the duty of such inspectors to visit the nurseries, orchards, stores, packing houses, warehouses and other places where horticultural products and fruits are kept within their respective district, and shall see that the regulations of the department of agriculture, labor and industry, and the laws of the state with reference to the disinfection of fruits, trees, plants, grafts, orchard debris and empty fruit boxes and other material shall be fully complied with. Said inspectors shall have access, at all times, to all orchards or places where horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of the commissioner of agriculture, and to order the destruction and disinfection of any or all trees, plants, fruits or horticultural products or supplies when found to be infected.

History: En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R. C. M. 1921.

3612. Appointment horticultural inspector. The commissioner of agriculture shall have the power to appoint some competent and qualified person to enforce the laws of the state relative to the grading and marketing of fruits and traffic and nursery stock, the control and destruction of insect pests, fungus and bacterial diseases, to enforce the law relative to the licensing of persons engaged in the business of selling or importing fruits, trees, plants or nursery stock in this state, and to supervise and direct the horticultural inspection service and the dissemination of horticultural knowledge.

History: En. Sec. 41, Ch. 216, L. 1921; re-en. Sec. 3612, R. C. M. 1921.

3613. Employment specialist insect pests. The commissioner of agriculture, subject to the approval of the state board of examiners, in special instances, may employ a specialist for the purpose of investigating the source, control and destruction of insect pests, fungus and bacterial diseases of orchards, trees, shrubs, plants or nursery stock in this state; such employment shall be for a period not exceeding six months in any one year, and shall be on such terms as may be agreed upon by the commissioner of agriculture and the state board of examiners.

History: En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R. C. M. 1921.

3614. Sale of nursery stock—inspection—fee. It shall be the duty of every person or persons, corporation or corporations, who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions or grafts not previously inspected under the provisions of this act, to notify the commissioner of agriculture, whose duty it shall be to notify the inspector of said district wherein such vines, etc., are to be delivered, at least five days before said goods are to be delivered, giving the date and nursery or railroad station where said trees, plants, scions, etc., are to be delivered, together with the name of the party or parties who are to receive the same. It shall be the duty of the inspector receiving said notice to inspect the said trees, plants, grafts, scions, etc., as soon thereafter as practicable, and if the same be found free from any and all diseases and pests, he shall so certify, and attach a certificate of inspection to each lot or bill of trees, grafts, plants, scions, etc., which said certificate must contain a list of the said trees, grafts, scions, vines or plants so inspected. But if any of the trees, grafts, scions, vines or plants so inspected shall be found to be diseased or infested with any of the pests, as prescribed by the commissioner of agriculture, then the inspector shall order the disinfection or destruction of said trees, grafts, scions, vines, etc., so diseased or infested, together with all boxes, wrapping or packing pertaining thereto; provided, that when any fruit or nursery stock is condemned by any inspector, said inspector shall notify the owner thereof, who may appeal to the commissioner of agriculture, whose decision shall be final, and charge and collect the sum of ten dollars for the disinfection and inspection of each carload of said nursery stock, and a proportionate sum for less than carload lots, as fixed by the commissioner; provided, that the commissioner of agriculture shall have power to designate certain places as quarantine stations, where all nursery stock brought into the state shall be inspected and disinfected; provided, that the provisions of this act shall not apply to any plants known as greenhouse plants and grown under glass. For the inspection of fruit, a fee of two cents per box or package, with a maximum fee of five dollars for each separate lot or car, shall be charged and collected. The inspector shall collect such fees and shall not give certificates of inspection until the fees are paid.

History: En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R. C. M. 1921.

3615. Penalty for failure to obey rules. If any person or persons in charge or control of any nursery, orchard, storeroom, packing-house, or other place where horticultural products or supplies are handled or kept, shall fail or refuse to comply with the rules and regulations of the com-

missioner of agriculture, or shall fail or refuse to disinfect or destroy diseased or infected trees, plants, scions, vines, grafts, shrubs, or other horticultural supplies or products, when ordered so to do by the inspector of such district, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R. C. M. 1921.

3616. Duty to notify inspector of infection. It shall be the duty of every owner or manager of every orchard, nursery, storeroom, packing-house, or other place where horticultural products or supplies are kept or handled, which shall become diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of such disease or pest, to notify the inspector of said district of the existence of the same. It shall be the duty of such owner or manager, at his own proper expense, to comply with and carry out all the instructions of said inspectors for the eradication of any disease or pest. Any person who shall fail or refuse to notify said inspector, as herein provided, or who shall fail or refuse to comply with the instructions of said inspector for the eradication of any disease or pest, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 1926, Ch. 121, L. 1911; re-en. Sec. 3616, R. C. M. 1921.

3617. Removal of infected trees—assessment of costs. If any person, firm, or corporation, or the legal representative of any person, firm, or corporation, owning any orchard, tree, shrub, or plant which is known to be infected with any injurious insect pest or disease and which thereby becomes a menace to the agricultural or fruit industry of this state shall fail, refuse, or neglect to comply with the instructions of the department of agriculture, labor, and industry, or its authorized representatives, for the eradication or control of such injurious insect pests or disease or the destruction of said infected orchard, tree, shrub, or plant, if in the judgment of said department, or its authorized representative, such destruction shall be deemed necessary, within the time specified by the said department, or its authorized representative, the said commissioner of agriculture, or his authorized representative, is hereby empowered to condemn, remove, or destroy any such orchard, tree, shrub, or plant, and if such owner or his legal representative shall fail, neglect, or refuse to pay the cost of such removal or destruction of such orchard, tree, shrub, or plant, within thirty days after due notice has been given by mailing to the owner at his last known postoffice address, then said cost and expense shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon said property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R. C. M. 1921.

3618. Penalty for delivery uninspected nursery stock. Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company, or common carrier, shall receive, deliver or turn over to any person or persons, corporation or corporations

any trees, vines, shrubs, nursery stock, scions, grafts and fruits without first having attached an inspector's certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R. C. M. 1921.

3619. Nurserymen's license—application—granting—revocation—duplicate copies of orders. It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fee, and furnished the bond, as in this act required. The license fee shall be twenty-five dollars per annum for nurserymen and dealers in nursery stock, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge. All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses shall bear the date of issue and shall expire the first day of July next following the date of issue; provided, that all licenses in force at the time of the taking effect of this act shall continue in force during the term for which they were issued, unless sooner revoked, and any holder of such license applying for a license under this act prior to the first day of July next following the expiration of his former license shall be required to pay therefor only the proportional part of the fee required for the annual license, for the remaining portion of the year until the first day of July next following.

Every nurseryman or dealer in nursery stock, applying for a license under this act, shall make, execute, and file with the commissioner of agriculture a bond running to the state of Montana, in the sum of one thousand dollars, with surety or sureties to be approved by the commissioner of agriculture, conditioned for the faithful compliance by the applicant with all of the provisions of this act and the laws of the state of Montana relating to the sale, disposition, delivery, inspection, and disinfection of nursery stock grown, dealt in, imported, sold, handled, or delivered by him during the term of the license applied for, and the term or terms of renewal of the same, and conditioned further that all nursery stock sold or delivered by him during said term shall be true to name, age, and

variety as represented, and free from the diseases and pests required to be guarded against by the horticultural laws and regulations of the state of Montana.

Every licensed nurseryman or dealer in nursery stock who shall have complied with the provisions of this act, shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of the fee of twenty-five dollars on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July first, so long as the bond originally given in compliance with the provisions of this section shall remain in force.

A license may be refused at any time, or revoked when the person, firm, or corporation applying therefor has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by any court of competent jurisdiction.

The cancellation or revocation of, or the withdrawal of the sureties from any bond filed in accordance with the provisions of this act, shall ipso facto work a suspension of the license of the principal of said bond, and the license of all agents, salesmen, and solicitors employed by and representing him until such a time as such principal shall furnish a new bond to be approved by the commissioner of agriculture.

Upon complaint in writing, verified under oath by the complainant, being made to the commissioner of agriculture, that the holder of any license in this act provided for has violated or failed to comply with the provisions of this act or the laws of the state of Montana relating to horticulture, the commissioner of agriculture, if in his judgment the complaint is justified, may revoke the license of the nurseryman complained of.

It shall be unlawful for any person to falsely represent or to misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale, or to falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such nursery stock was grown in or came from another location, or nursery, or to deceive or defraud any person in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered, or to wilfully or intentionally bring into this state, or to offer for sale or distribution within this state, or to ship, sell or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state, and in case of such misrepresentation, false representation, deceit, fraud, or substitution, shall be subject to punishment as provided by the statute for misdemeanor, and shall be liable to the person, firm, or corporation damaged or injured thereby, the amount of all damage sustained to be recovered in a civil action in any court of competent jurisdiction; and any person, firm, or corporation suffering damage by reason of having purchased any nursery stock of a licensed nurseryman, or dealer in nursery stock, delivered within this state, or shipped from a point within or without this state for delivery within this state, or by reason of the destruction of such infected or infested nursery stock by or under the direction of any horticultural inspector, as in this act provided, or by reason of receiving any nursery stock which is not true to name, age, va-

riety, or class as represented by the nurseryman, dealer, agent, salesman, or solicitor selling the same, or as ordered, shall have recourse against the bond filed by the licensed nurseryman or dealer from whom such stock has been purchased, for all damages sustained, including damages in case of misrepresentation, deceit, fraud, or substitution, which damage may be recovered at the suit of the party injured against the nurseryman or dealer causing the damage and the sureties on such bond, in any court of competent jurisdiction; provided, no liability shall attach on such bond by reason of nursery stock being untrue to name, age, variety, or class, unless at least five per cent. of any variety ordered shall prove untrue to name, age, variety, or class.

It shall be the duty of all nurserymen or dealers in nursery stock, and all salesmen, solicitors, and agents therefor, to give to every person ordering any nursery stock a duplicate copy of such order which shall show:

1. The name and location of the nursery where such stock is grown.
2. The name of the nurseryman from whom ordered, and the name of the solicitor, salesman, or agent taking such order.
3. The date of the order and when delivery is to be made.
4. The number, name, age, and price of such variety of tree or plant ordered.

In the event of the shipment into this state from any point without this state of any nursery stock, by a person, firm, or corporation not licensed to do business in this state, as in this act provided, it shall be the duty of the purchaser or person receiving such nursery stock to have the same inspected by a horticultural inspector, in the same manner as is required upon the delivery of nursery stock sold and delivered by a licensed nurseryman or dealer in nursery stock within this state, and to pay an inspector's fee of ten per cent. of the invoice price of such shipment; provided, that the minimum fee for such inspection shall be fifty cents and the actual and necessary traveling expenses of the inspector making the inspection; and provided, further, that no inspection fees shall be collected in excess of the regular inspection fees, where such stock is shipped to a person, firm, or corporation, holding a Montana license, as provided in this act.

Licenses granted under this act shall be for one year, unless revoked for any violation of this act.

History: En. Sec. 47, Ch. 216, L. 1921; re-en. Sec. 3619, R. C. M. 1921.

3620. Notice to commissioner shipment nursery stock. It shall be the duty of every person, firm or corporation, licensed to do business under this act to notify the commissioner of agriculture of his intention to ship an invoice of fruit trees, plants, or nursery stock not previously inspected under the provisions of this act, from one point to another in this state, or from any point without this state into this state. The said notice shall contain the name and address both of the consignor and consignee, and the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the trans-

portation company from whom the consignee is to receive the goods. Such notice shall be mailed at least five days before the day of shipment.

History: En. Sec. 48, Ch. 216, L. 1921; re-en. Sec. 3620, R. C. M. 1921.

3621. Penalty for receiving uninspected nursery stock. Any person or persons who shall receive and accept any nursery stock, fruit trees, plants, vines, scions, cutting, grafts, etc., that have not been inspected by a duly appointed inspector of the commissioner of agriculture, and shall use or dispose of said nursery stock, fruit trees, vines, plants, scions, cuttings, grafts, etc., without first notifying the inspector and furnishing him an opportunity to examine, and, if necessary, fumigate said nursery stock, will be deemed guilty of a misdemeanor, and will be subject to fine as further provided in this act.

History: En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R. C. M. 1921.

3622. Delivery of nursery stock without certificate. Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company, or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions, and grafts, without first having attached the inspector's certificate (as provided in section 1924 of this act), shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 1928, Ch. 121, L. 1911;
re-en. Sec. 3622, R. C. M. 1921.

References

Cited or applied as section 1928, revised codes, as amended, in *Welch v. Dean*, 49 M 263, 266, 144 P 548.

NOTE.—The bracketed section was repealed by chapter 216, laws of 1921.

3623. Right to hold produce for inspection. No person or persons, corporation or corporations, shall be liable to any other person or persons, corporation or corporations, for any damage to any trees, vines, or shrubs, nursery stock, scions or grafts, by reason of the same being held to await the certificate of the inspector (as provided in section 1924 of this act).

History: En. Sec. 1929, Ch. 121, L. 1911; re-en. Sec. 3623, R. C. M. 1921.

NOTE.—See note to preceding section.

3624. Inspection of Montana nursery stock—certificate. All nursery stock, trees, plants, vines, and cuttings grown or growing within the state of Montana, used for filling orders, shall after said stock shall in the manner and at the times designated by the commissioner of agriculture, and before the same shall have been packed for delivery, be inspected by a duly appointed inspector, and shall be disinfected by fumigating or other method, when in his judgment such is necessary. After such inspection if it be found that said nursery stock, trees, plants, vines, and cuttings are clean and free from insects and fungi pests, he shall issue his certificate to said nurseryman, and said certificate shall entitle him to use said stock, so inspected and disinfected, for filling orders for the next current delivery; and said inspector's certificate shall be furnished to those entitled to them at a price not to exceed forty cents per hundred.

Nurseries shall give to the commissioner of agriculture five days' notice of the time when said stock shall be ready for inspection under the provisions of this act.

History: En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R. C. M. 1921.

3625. Penalty for violation of act. Any person or persons, corporation or corporations, transportation companies, or common carriers, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and fined in the sum of not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R. C. M. 1921.

3626. Importation and sale of infected fruit. It shall be unlawful for any person, firm, or corporation to import into this state, sell, barter, or otherwise dispose of, or offer for sale, or have in his possession for the purpose of sale or barter, any fruit which is or has been infested with San Jose scale, or other scale insect pests, or the larvae of the codling moth, and the fact that any fruit bears the mark of any such scale insect, or is worm-eaten by the larvae of the codling moth, shall be deemed conclusive evidence that the fruit is infected within the meaning of this section, and may be condemned and confiscated by any legal horticultural inspector; provided, that nothing in this section shall be construed to prevent the growers of such infected fruit from manufacturing the same into a by-product, or selling and shipping the same to a by-product factory, after having first obtained a permit so to do from a horticultural inspector.

History: En. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R. C. M. 1921.

3627. Quarantine of orchards—penalty for violation. The Montana commissioner of agriculture is hereby authorized and empowered to establish a quarantine over any orchard or place where fruits are grown or kept, that is infested with any injurious disease or insect pest; and said commissioner may establish such rules and regulations governing such quarantine, and regulating or restricting the use of such fruits upon the premises, or the shipment or disposition of the same, as he may deem necessary to prevent the spreading of such disease or diseases or insect pests.

Any person who shall violate the provisions of this section, or the rules and regulations established by said commissioner of agriculture, or who shall ship or dispose of any diseased or infested fruit or fruit products in violation of the order of said commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R. C. M. 1921.

3628. Expenses of eradicating orchard diseases—collection as tax. Whenever, under the direction or regulations of the Montana commissioner of agriculture, any money is expended by said board for the purpose of eradicating any disease or insect pest from any orchard or other place where fruits are grown or kept, said commissioner, through its representative, shall notify the owner of such orchard or premises in writing of the amount so expended plus an additional charge of twenty-five per

cent. of the amount so expended. Said notice shall be mailed to the last known address of such owner, and if such owner shall fail to pay the amount so expended by said commissioner plus an additional charge of twenty-five per cent. of the amount so expended, within thirty days of the time such notice is sent, then and in that event the commissioner shall file a statement, verified under oath by himself or his representative, with the county treasurer in the county wherein said money shall have been expended. Said statement shall set forth the amount so expended plus an additional charge of twenty-five per cent. of the amount so expended, together with the correct description of the property on which such money was expended as it appears on the assessment-roll of the county. The county treasurer shall add the total amount as set forth in said statement to the taxes upon said property, and shall collect the same as provided by the law for the collection of taxes for state and county purposes.

History: En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R. C. M. 1921.

3629. Same—disposal of money. The county treasurer in any county where any money is collected as provided in the preceding section shall, on or before the first day of February of each year, remit the amount to the state treasurer, who shall deposit same to the credit of the general fund of the state.

History: En. Sec. 54, Ch. 216, L. 1921; re-en. Sec. 3629, R. C. M. 1921.

3630. Inspection of apples packed for sale—procedure. It shall be the duty of the commissioner of agriculture, or his authorized representative or inspector, to inspect all apples packed for sale or shipment pursuant to the provisions of sections 4265 to 4272 of this code, and said commissioner is hereby authorized to certify to the grade and pack thereof, and to charge the owner, packer, or shipper of any such apples a fee to be fixed by said commissioner of agriculture for such services, and said commissioner may make such rules and regulations regarding such inspection, not in conflict with the laws of the state, as he may deem proper.

History: En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R. C. M. 1921.

NOTE.—Sections 4265 to 4272 were repealed by Ch. 138, L. 1931. See sections 4265.1 to 4265.6 which superseded the above sections.

3631. Quarantine against insect pests and plant diseases in other states. Whenever the governor of the state has good reason to believe that any pest, gypsy moth, brown-tail moth, Mediterranean fruit-fly, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, or flax-wilt, or other fruit or plant disease or insect pest, dangerous or inimical to the horticultural or the agricultural industry, exists in certain localities in another state, territory, or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate such localities, and prohibit the importation therefrom of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under such restrictions as he, after consulting with the state board of horticulture, the commissioner of agriculture, or the state entomologist may deem proper.

History: En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R. C. M. 1921.

3632. Governor may quarantine against insect pests. Whenever the governor of this state has good reason to believe that any pest, gypsy moth, brown-tail moth, potato wart, potato canker, black scab, potato ell-worm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, flax wilt, or other plant disease or insect pest, dangerous or inimical to the agricultural or horticultural industry, exists within any county or locality within the state, it shall be specifically understood that he has authority to quarantine any county, district, locality or ranch, and it shall be his duty to prescribe and enforce such rules and regulations as may be necessary to prevent the movement of any designated articles or materials whatever across the boundaries of such quarantined counties, districts, localities, or ranches, and for the control and eradication of such pests or diseases.

History: En. Sec. 2, Ch. 61, L. 1913; amd. Sec. 1, Ch. 89, L. 1921; re-en. Sec. 3632, R. C. M. 1921.

3633. Penalties for receiving products from infected districts. Any person, firm, or corporation who, after publication of such proclamation, knowingly receives in charge any tubers, plants, nursery stock, fruit, seeds, or agricultural crops, plants, or seeds from any of the prohibited districts, and transports, conveys, sells, or uses the same within the limits of this state, is guilty of a misdemeanor, and punishable by a fine of not less than ten dollars or more than five hundred dollars, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited and diseased tubers, plants, nursery stock, fruits, seeds, or agricultural crops, plants, or seeds.

History: En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R. C. M. 1921.

3633.1. Standard grades for Montana farm products. The standard grades for Montana farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1933.

3633.2. Definitions. The following terms, whenever used in this act, or in rules and regulations later promulgated by the commissioner of agriculture, shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The term "farm products" shall mean all products of the farm intended for table use and also to include beans; but shall not include live-stock and its by-products; poultry and its products; apiary products; dairy products; grain and apples.

(c) "Container" or "package" shall mean cloth or fibre sacks, barrel, box, crate, carton, hamper or baskets, such as are customarily used for the shipment of farm products.

(d) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

History: En. Sec. 2, Ch. 165, L. 1933.

3633.3. Commissioner to establish standard grades—notice required.

(a) The commissioner of agriculture shall at once establish in the manner provided by this act, United States standard grades on strawberries, potatoes, onion, head lettuce, cabbages, beans and shall thereafter, as soon as any agricultural product shall have reached a volume rendering it of market importance, establish United States grades on same.

(b) The commissioner of agriculture shall establish grades by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933.

3633.4. Scale of products without grading and branding unlawful—sale of cull and unclassified products—seed potatoes of first class commercial grade.

(a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or consignment in interstate or intrastate commerce, farm products prepared for market which are not graded and branded to meet the requirements of the grade declared. The grade declared shall conform to the provisions of this act.

(b) Provided that farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labelled, tagged or branded "For Seed Purposes."

(e) Provided further that potatoes graded over a two (2) inch screen and grading seventy-five per cent (75%) United States No. 1 and twenty-five per cent (25%) United States No. 2 may be classified and sold as first class commercial grade.

History: En. Sec. 4, Ch. 165, L. 1933.

3633.5. Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.

(a) It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled or stenciled before being moved from the premises of the person or persons responsible for the grading and packing, and the name of the grade, together with the true net contents expressed in weight.

(b) When tags are used, United States No. 1 grade shall be declared on a white tag, and United States No. 2 grade shall be declared on a red

tag. Bulk shipments shall be accompanied by two (2) cards not less than four by six inches (4" x 6") in size, placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are deemed for sale when the containers are packed for delivery or transit, or when same are exposed for sale, or when same are in process of delivery or transit, or located at a depot, station, boat dock, or any place where farm products, or other products are held for storage, or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933.

3633.6. Inspection of condition of products in storage or transit. Farm products held in storage or in transit which at the time of inspection show deterioration or decay, but otherwise up to the grade, shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933.

3633.7. Enforcement of act. The commissioner of agriculture is hereby charged with the enforcement of this act and is given power unto himself and to his duly appointed representatives to enter into and upon the premises where farm products are graded or packed or stored, to inspect the same as to grade, pack and condition.

History: En. Sec. 7, Ch. 165, L. 1933.

3633.8. Rules and regulations for enforcement. The commissioner of agriculture may promulgate rules and regulations deemed necessary to the proper enforcement of the provisions of this act.

History: En. Sec. 8, Ch. 165, L. 1933.

3633.9. Intent and purpose of act. The intent and purpose of this act is to regulate the sale of farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933.

3633.10. Violation of provisions—penalty. Whoever violates this act by not grading farm products as herein required, or by not tagging or branding containers as herein required, or by removing or altering any tag or brands placed upon or attached to any containers as in this act required, unless ordered to do so by the commissioner of agriculture, or his duly appointed representative or representatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment in accordance with the discretion of the court.

History: En. Sec. 10, Ch. 165, L. 1933.

3633.11. Grade of agricultural products to be stated in advertisements.

That all advertised prices on agricultural products, on which grades have been established by law, in this state, whether in newspapers, circulars, bills, placards, signs or in any other manner shall in addition to the price quoted show the true grade of the product as provided by law; provided, that price tags exhibited in a place of business upon exposed products shall not be considered advertising under the provisions of this act.

History: En. Sec. 1, Ch. 46, L. 1935.

3633.12. Penalty for violations. Any person, firm or corporation failing to comply with section 3633.11 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00) or more than twenty-five dollars (\$25.00).

History: En. Sec. 2, Ch. 46, L. 1935.

3634. Arbor day proclamation. For the purpose of advancing the interests of tree planting and arboriculture in this state, the second Tuesday in May is hereby designated as Arbor day, and it is duty of the governor to annually make his proclamation setting apart that day for the planting of trees and for beautifying homes, cemeteries, highways, public grounds, and landscapes, and the teachers in the public schools must on that day instruct the pupils as to the importance of tree planting and give practical lessons in landscape gardening.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 103, Ex. L. 1887; re-en. Sec. 3380, Pol. C. 1895; amd. Sec. 2, Ch. 11, L. 1907; Sec. 2095, Rev. C. 1907; re-en. Sec. 3634, R. C. M. 1921.

3634.1. State horticultural revolving fund—composition and use of.

The state treasurer and state auditor are hereby directed to open and maintain upon their respective books of accounts a fund to be known as the state horticultural revolving fund, in which shall be placed the following moneys, to-wit:

1. Such sums as the legislature may from time to time appropriate for the use of said fund.

2. All moneys collected by either the commissioner of agriculture or by the county treasurer under the authority of section 3617 of this code, where the expense incurred was paid by warrants drawn on the said state horticultural revolving fund.

3. All moneys in said fund at the time of the passage and approval of this act.

4. All moneys heretofore expended from said fund, which shall be hereafter returned thereto.

Such fund shall be maintained as a revolving fund for the use of the division of horticulture of the department of agriculture, labor, and industry, out of which shall be paid such claims as may be approved by the commissioner of agriculture and the board of examiners for labor and for other expenses incurred for the removal of infected trees.

History: En. Sec. 1, Ch. 144, L. 1925; amd. Sec. 1, Ch. 51, L. 1927.

3634.2. Reimbursement of state general fund. The state general fund shall be reimbursed for such sums as the legislature from time to time may appropriate for the horticultural revolving fund by the return to it of all

collections made by the commissioner of agriculture, or by the county treasurers as provided in section 3617, 3628 and 3629, of this code.

History: En. Sec. 2, Ch. 144, L. 1925.

3635. Division labor and publicity—duties. The department of agriculture, labor, and industry, through the division of labor and publicity, shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, protection of employees, and all laws relating to child labor regulating the employment of children in any manner; it shall also be the duty of such division to administer all the laws of the state relative to free employment offices.

History: En. Sec. 56, Ch. 216, L. 1921; re-en. Sec. 3635, R. C. M. 1921.

3636. Maintenance employment offices by city council. It is the duty of the city council of any incorporated city of the first or second class within this state, and it shall be lawful for the city council of any other incorporated city, to provide for the establishment of a free public employment office to be conducted on the most approved plans, and to provide for the expenses thereof out of the revenues of the city in which the same is established. The annual report of the department of agriculture, labor, and industry shall contain a detailed account of all such free employment offices within the state showing the number of applicants for employment, the number securing employment, and the expenses of maintaining such office.

History: En. Sec. 57, Ch. 216, L. 1921; re-en. Sec. 3636, R. C. M. 1921.

3637. Examination of witnesses—inspection of factories, etc. In discharging the duties imposed upon the division of labor and publicity, the commissioner of agriculture shall have power to administer oaths, to examine witnesses under oath, to take depositions or cause same to be taken, to depute any male citizen over the age of twenty-one years to serve subpoenas upon witnesses, and to issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts. The commissioner of agriculture shall likewise have the authority to inspect any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment, and any person who shall refuse to the commissioner admission to any of the industrial establishments herein enumerated when admission is requested for the purpose of inspection, or who shall, when requested by the commissioner, wilfully neglect or refuse to furnish to him any statistics or other information which may be in the possession or under the control of such person, or who shall refuse to obey any subpoena issued by the commissioner, shall be deemed guilty of a misdemeanor and be punished accordingly. Nothing herein contained shall in any manner confer upon the commissioner of agriculture the authority to interfere in any manner with the conduct of the matters under the control of the industrial accident board, nor shall said commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs of said industrial accident board, nor with the enforcement of the safety provisions of the workmen's compensation act.

History: En. Sec. 58, Ch. 216, L. 1921; re-en. Sec. 3637, R. C. M. 1921.

3638. Statistics—preparation and publication. The department of agriculture, labor, and industry, through the division of labor and publicity, shall prepare statistics and data, and shall publish a report relating to the agricultural, commercial, mining, manufacturing and other resources of the state, and such report shall be published and distributed in such form and quantity as in the judgment of said department may be deemed expedient and practicable. All reports sent out by said department shall bear a certificate thereon to the effect that they are issued by the authority of the state of Montana. The department shall also open correspondence with bureaus of emigration, boards of trade, and other organizations who are willing to assist in disseminating information in regard to the climate, industries, and resources of the state of Montana to the end that such information may become as generally available as possible.

History: En. Sec. 59, Ch. 216, L. 1921; re-en. Sec. 3638, R. C. M. 1921.

3639. Duty public officers to furnish statistics. It is hereby made the duty of all state and county officers to furnish to the division of labor and publicity any data, statistics, and information under their control when requested by said department, relating to the population, industries, climatic conditions, and assessed valuation of the state or any subdivision thereof.

History: En. Sec. 60, Ch. 216, L. 1921; re-en. Sec. 3639, R. C. M. 1921.

3640. Control of state fair. The department of agriculture, labor, and industry, through the division of labor and publicity, shall have entire charge and control of the Montana state fair, and it shall be its duty to cause the holdings of said fair in the manner provided by sections 1580 and 1581 of these codes.

History: En. Sec. 61, Ch. 216, L. 1921; re-en. Sec. 3640, R. C. M. 1921.

3641. State fair advisory board—composition, duties, and fee. To assist said department in the management and conducting of said state fair, there shall be a state fair advisory board consisting of one representative from each county to be appointed by the board of county commissioners; the members of said board shall hold office for a period of four years and until their successors are appointed and qualified; members of said board shall take the constitutional oath of office and shall file the same in the office of the secretary of state. The duties of the advisory board shall be to aid in making the state fair a success, to perform such duties as shall be imposed upon them by the commissioner of agriculture, and in particular to see that the several counties of the state are represented at said fair by proper and comprehensive exhibits. Members of said board shall be paid the sum of five dollars per day, together with actual traveling expenses for time expended by them in performing the duties of their office.

History: En. Sec. 62, Ch. 216, L. 1921; re-en. Sec. 3641, R. C. M. 1921.

3642. Assistants to state fair advisory board. The commissioner of agriculture is hereby authorized to appoint as many members of the state fair advisory board or such other persons interested in agriculture, live-stock or allied activities as he may see fit to act as a committee to assist him in the immediate management and control of the state fair, and it shall

be the duty of such committee to attend upon the order of the commissioner of agriculture, and to perform such duties as he may require.

History: En. Sec. 63, Ch. 216, L. 1921; re-en. Sec. 3642, R. C. M. 1921.

3643. Custody of state fair property—letting of privileges. The commissioner of agriculture shall have the care and custody of all property belonging to the state fair, and shall be entrusted with the direction and administration of all of its business and affairs, and shall adopt and enforce all necessary rules for the conduct and management of the fair and for the regulation of its officers and employees. Said commissioner shall arrange for the letting of stalls, stands, and all other privileges and concessions; provided, however, that as entrance fees, money derived from the letting of privileges and as to prizes offered, said matters shall be approved by the state board of examiners.

History: En. Sec. 64, Ch. 216, L. 1921; re-en. Sec. 3643, R. C. M. 1921.

3644. Location of state fair. The state fair shall be permanently located on the present grounds now owned by the state and devoted to that purpose, located north of the city of Helena, in Lewis and Clark county, and such additional lands as may hereafter be obtained in connection therewith are hereby dedicated for the use of the Montana state fair.

History: En. Sec. 65, Ch. 216, L. 1921; re-en. Sec. 3644, R. C. M. 1921.

3645. Disposal of fees—revolving appropriation accounts. All fees and earnings of the department of agriculture, labor, and industry and its divisions and activities from whatsoever source they may be derived, except the income and earnings of the Montana state fair, and all contributions which may be received from public or private bounty, are hereby annually and perpetually appropriated for the use of said department of agriculture, labor, and industry. All moneys received by the department of agriculture, labor, and industry in the administration of all laws and the management of the institutions under its control, belonging to or for the use of the state, shall be deposited with the state treasurer on the tenth and twenty-fifth days of each month without deduction of any sort on account of salaries, fees, costs, charges, or expenses, or otherwise, and shall be credited to the general fund of the state of Montana. All fees and earnings of the Montana state fair, excepting income from the sale or rental of the capital assets of said fair, shall be deposited with the state treasurer, without deduction of any sort, and shall be credited by him to the general fund of the state for the use and benefit of the general fund. The state auditor shall keep upon his books an account to be known as the "department of agriculture revolving appropriation account," to which shall be credited all other general fund receipts arising from all operations of the department of agriculture, labor, and industry other than the state fair, and from which shall be paid such other claims of the department of agriculture, labor, and industry as may be designated by the state board of examiners. The state board of examiners may, in its discretion, by resolution duly adopted and entered upon the minutes of said board, authorize the establishment and maintenance in the business office of the department of agriculture, labor, and industry or any of its divisions, one or more contingent revolving ac-

counts, transferring in trust to said department such sum or sums of money as may appear necessary for the payment of demands requiring immediate cash payment, under specific regulations to be established by said board of examiners. But each and every division so granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel or modify such authorizations and recall such funds or any part thereof at pleasure; provided, however, that nothing in this act shall be construed as preventing the establishment and maintenance by the state board of examiners of contingent revolving accounts in the divisions of grain standards and marketing, of horticulture, and of labor and publicity, transferring in trust to the business offices of such divisions such sums of money as may appear necessary to be used by said divisions for the payment of demands, requiring immediate cash payment in connection with grain grading and inspection, orchard spraying and fruit and nursery stock inspection, and in conducting the state fair, under specific regulations to be established by said board of examiners. But each and every division granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 66, Ch. 216, L. 1921; re-en. Sec. 3645, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1923.

3646. Existing departments abolished. The following offices, commissions, and departments of the state government heretofore constituted by law are hereby abolished, to-wit:

The state board of horticulture.

The state horticulturist.

The board of directors of the state fair.

The board of dairy commission examiners.

The department of labor and industry.

The department of agriculture and publicity.

The state dairy commissioner.

The grain grading inspection and warehousing commission of the state of Montana.

The state board of poultry husbandry.

History: En. Sec. 67, Ch. 216, L. 1921; re-en. Sec. 3646, R. C. M. 1921.

3647. Transfer special funds to general fund. The state treasurer is hereby authorized and directed, upon the taking effect of this act, to transfer to the general fund of the state of Montana any money in his hands belonging to any and all special funds heretofore created by law for the deposit of moneys received by the boards and departments mentioned in the preceding section.

History: En. Sec. 68, Ch. 216, L. 1921; re-en. Sec. 3647, R. C. M. 1921.

3648. Successor to existing departments. The department of agriculture, labor, and industry is hereby designated as the legal successor of all the offices, boards, commissions, and departments mentioned in section

3646 of this code; all books, papers, and records of said offices, boards, commissions, and departments shall be turned over to the department of agriculture, labor, and industry, and said department is hereby authorized to carry out any contracts, complete any business, or prosecute or defend any suits heretofore entered into or instituted by any of the offices, boards, commissions, or departments mentioned in said section.

History: En. Sec. 69, Ch. 216, L. 1921; re-en. Sec. 3648, R. C. M. 1921.

3649. Penalty for failure to obey orders of department. Any person, firm, company, or corporation who shall violate any of the provisions of this act, or who shall fail to comply with any order of the department of agriculture, labor, and industry, or of the commissioner of agriculture, or any of his lawfully constituted agents; provided, that said order be made in pursuance of the authority granted by this act, shall be deemed guilty of a misdemeanor and punishable by a fine of not to exceed five hundred dollars, or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

History: En. Sec. 70, Ch. 216, L. 1921; re-en. Sec. 3649, R. C. M. 1921.

3649.1. Bond and license for farm produce dealers. Each person, firm, corporation or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the commercial agencies, engaged in the business of buying in carlots for resale, hay, potatoes, apples, vegetables or other farm produce, not including grain, livestock or poultry, within the state of Montana, shall on or before the first day of July of each year, give a bond with good and sufficient sureties, to be approved by the commissioner of agriculture, to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of his duties as such dealer, and upon the payment when due of the purchase price of farm products purchased by him, and for the prompt reporting of sales to all persons consigning farm produce to the licensee for sales on commission, and the prompt payment to the persons entitled thereto of the proceeds of such sales less lawful charges, disbursements and commissions. Each person, firm, corporation, or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the commercial agencies, engaged in the business of dealing in farm produce, as described herein within the state of Montana, shall on or before the first day of July of each year pay to the state treasurer of the state of Montana, a license fee in the sum of \$5.00, and upon the payment of such fee, the commissioner of agriculture shall issue to such person, firm, corporation or association of persons, a license to engage in such business at the place described within the state of Montana for the period of one year. Any person, firm, corporation or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the commercial agencies, who shall engage in or carry on any business for which a license is required by this act, or who shall continue to engage in such business after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$10.00 nor more than \$50.00, and each and every day for such business engaged in shall be a separate offense.

History: En. Sec. 1, Ch. 147, L. 1925.

3649.2. Acts constituting misdemeanor. Any person, firm, corporation or association of persons engaged in the business of handling farm produce under license as described herein, who shall:

(a) Impose false charges for handling, or services in connection with farm produce; or

(b) Fail to account for such farm produce promptly and properly and to make settlements therefor, with intent to defraud; or

(c) Directly or indirectly purchase for his own account, goods, received by him upon consignment, except with the consent of the owner; or

(d) Makes false statements or reports as to grade, condition, markings, quality or quantity of goods received, shipped or packed in any manner with intent to deceive; is guilty of a misdemeanor, and the commissioner may forthwith revoke the license granted such person, firm, corporation, or association of persons.

History: En. Sec. 2, Ch. 147, L. 1925.

3649.3. Report of licensees—inspection—authority of commissioner of agriculture. The commissioner of agriculture may require regular and special reports from licensees under this act at such times, and in such form as he may deem expedient. He may upon complaint cause the business of any licensee and the mode of conducting same to be inspected, and the books, records, accounts, papers and procedures of every such licensee shall at all times during business hours be subject to such inspection. It shall be the duty of the commissioner of agriculture to intervene in the interests of claimants in cases of insolvency, violations of the provisions of section 3649.2, or failure to report upon or pay for farm produce received by any such licensee. The commissioner of agriculture shall have power to demand payment of its undertaking by the surety upon any bond given under this act and it shall be the duty of the attorney general or any county attorney of this state to represent the commissioner of agriculture in any necessary action against such bond when facts constituting grounds for action are laid before him.

History: En. Sec. 3, Ch. 147, L. 1925.

CHAPTER 307

FISH AND GAME LAWS—COMMISSION AND WARDEN

- Section 3650. State fish and game commission—creation.
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- 3674. Publication of laws.
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- 3677. Posting and publication of orders, rules and regulations of commission.
- 3678. Effect of orders, rules and regulations.
- 3679. Penalty for violations of orders, rules and regulations of commission.
- 3680. Effect partial invalidity of act.

3650. State fish and game commission—creation. There is hereby created for the state of Montana a state fish and game commission, which shall be composed of five members, with the powers and duties in this act specified, and which is hereinafter referred to as “the commission.”

History: Earlier acts creating fish and game commissions were Ch. 176, L. 1907; Secs. 1980 et seq., Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1911; amd. Sec. 8, Ch. 173, L. 1917. This section en. Sec. 1, Ch. 193, L. 1921; re-en. Sec. 3650, R. C. M. 1921.

NOTE.—The fish and game laws are arranged in this code in the following order:

First. Chapter 193, laws of 1921, which relates chiefly to the powers and duties of the fish and game commission and fish and game warden.

Second. Chapter 238, laws of 1921, which deals with the subject of licenses and closed seasons.

Third. The remaining unrepealed parts of chapter 173, laws of 1917, and such other fish and game laws as were not repealed by either of the above acts.

References

State ex rel. Nagle v. Sullivan et al., 98 M 425, 40 P 2d 995.

3651. Membership—terms. The members of the commission hereby created shall be appointed by the governor of the state of Montana. The selection of said members shall be made without regard to political affiliation, but for the sole welfare of the fish, game, and wild life of the state, and not more than three of said members shall belong to the same political party. Two of said members shall be appointed to serve for one year, one to serve two years, one to serve three years, and one to serve four years, and thereafter to be appointed by the governor at the expiration of their first terms, to serve for four years, unless sooner removed. All vacancies in the commission shall be filled by the governor. The governor is hereby given the power to remove any member of said commission for cause or for the good of the commission. No person shall be appointed a member of said commission unless he shall be informed on, and interested in, the subject of wild life, fish, and game, and the requirements for the conservation and propagation of fish, game, and game birds and animals. The first members of the commission shall be appointed by the governor within thirty days after the passage and approval of this act. Each commissioner shall, before entering upon his official duties, execute and file a bond with the secretary of state, running to the state of Montana, in the penal sum of one thousand dollars, with sureties to be approved by the state treasurer, conditioned for the faithful performance of his duties, and that he will account for, and pay over to the fish and game fund of the

state, all moneys received by him, and he shall be reimbursed for the premium on said bond from the state fish and game fund upon furnishing a proper voucher therefor.

History: En. Sec. 2, Ch. 193, L. 1921; re-en. Sec. 3651, R. C. M. 1921.

Removal of Commissioners Without Notice Held Illegal

Prior to the enactment of chapter 193, laws of 1921, (sections 3650-3680), members of the fish and game commission appointed by the governor were under the laws applicable removable for cause after notice and hearing. By that chapter the legislature, after providing that the terms of the commissioners shall be four years, declared that they should be removable "for cause or the good of the commission." The governor without notice or

hearing removed a member of the commission "for the good of the commission." Held, in a proceeding in quo warranto, that whenever the charges on which a fish and game commissioner is sought to be removed involve malfeasance, misfeasance or nonfeasance in office, or directly reflect upon the official or personal integrity of the incumbent proposed to be removed, the act requires notice and an opportunity to meet the charges, and that these requirements not having been met, removal of the incumbent was illegal. State ex rel. Nagle v. Sullivan et al., 98 M 425, 443, 40 P 2d 995.

3652. Meetings. The members of the commission shall within thirty days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925.

3653. Powers and duties of commission. The commission hereby created shall have supervision over all the wild life, fish, game, and non-game birds, and waterfowl, and the game, and fur-bearing animals of the state, and shall possess all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in the proper courts of this state for the enforcement of the fish and game laws of the state, and the orders, rules and regulations adopted and promulgated by the commission. It shall have full power and authority to enforce all the laws of the state of Montana, respecting the protection, preservation and propagation of fish, game, and fur-bearing animals, game and non-game birds, within the state. It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game, and fur-bearing animals, and game and non-game birds, all funds of the state of Montana collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise, all sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other sources are hereby appropriated to and placed under control of the Montana fish and game commission. It shall have power to discharge any appointee

or employee of such commission for cause at any time. It shall have full power and authority to dispose of all property owned by the state of Montana, used for the protection, preservation and propagation of fish, game and fur-bearing animals, and game and non-game birds, which shall have been found to be of no further value or use to the state, and shall turn over proceeds arising therefrom to the state treasurer to be by him credited to the state fish and game fund. It shall have full power and authority to use so much of the fish and game funds of the state as may be necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms, or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or non-game birds in the state of Montana, and it shall have the authority to appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or non-game birds. It shall have authority to provide for the importation of game birds and game and fur-bearing animals, and for the protection, propagation, and distribution of such imported or native birds and animals. It shall have authority to spend so much of the state fish and game funds as may be necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state. It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair of fish ladders upon dams and other obstructions in streams, which, however, shall be installed and maintained at the expense of the owners of said dam or other obstruction. It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install them in irrigating ditches to prevent fish entering said ditches. It shall have authority to locate, lay out, construct and maintain nurseries and rearing ponds where fry can be planted, propagated and reared, and when of suitable sizes, liberated and distributed in the waters of this state, and may expend from the state fish and game funds such sums as may be necessary for this purpose. It shall have authority to acquire by gift, purchase, capture, or otherwise, any fish, game, game birds, or animals, for propagation, experimental or scientific purposes. It shall have authority to acquire by purchase, condemnation, lease, agreement, gift, or devise, lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes: (a) For fish hatcheries, nursery ponds, or game farms; (b) Lands or waters suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; (c) For public hunting, fishing, or trapping areas to provide places where the public may hunt, trap, or fish in accordance with the provisions of law or the regulations of the commission; (d) To extend and consolidate by exchange lands or waters suitable for the above purposes; (e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species. It shall have authority to enter into cooperative agreements with educational in-

stitutions and state, federal, or other agencies, to promote wild-life research and to train men for wild-life management. It shall have authority to enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of land-owners, associations and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects. It shall have authority to fix seasons and bag limits, or shorten or close seasons on any species of game, bird, fish, or fur-bearing animal, in any specified locality or localities or the entire state, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the commission. It shall have authority to establish and close to hunting, trapping or fishing, game, bird or fish refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof, to hunting, trapping, or fishing. It shall have authority to divide the state into fish and game districts, and to create fish, game, or fur-bearing animal districts throughout the state of Montana and to declare closed season for hunting, fishing, or trapping in any of said districts, so created, and later to open said districts to hunting, fishing, or trapping. It shall have authority to declare a closed season on any species of game, fish, or game birds, or fur-bearing animals threatened with undue depletion, from any cause, and to close any area or district or any stream, public lake, or public water, or portions thereof, to hunting, trapping, or fishing, for limited periods of time, when such action is necessary to protect recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and fur-bearing animals, and game and non-game birds, and later to open the same upon consent of a majority of the property owners affected. It shall have authority to establish game refuges for the purpose of providing safe sanctuaries in which game and fur-bearing animals or game or non-game birds may breed and replenish. Such refuges shall be established by order of the commission upon the petition and proper showing that such action is, in judgment of the fish and game commission, necessary and in the best interest of the wild-life within the area, to be included within such refuge, it being the purpose of this provision to establish small refuges rather than large preserves or rather than to close large areas to hunting or trapping. It shall have authority to designate and protect certain areas as resting, feeding and breeding grounds for migratory birds, in which hunting and molestation shall be forbidden; it being the purpose of this provision not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation. After petition has been duly filed with the secretary of the commission, praying that an area shall be set aside as a game refuge or haven, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at such place in said county as may be designated on a day not less than fifteen (15) days from the date of the first

publication, to be specified in said notice, at which time and place all interested parties shall have the right to appear and be heard. It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion of such statistics and information as shall be germane to the purpose of this act. Said commission shall, in addition to the powers heretofore granted, have such other and further powers as may be necessary to fully carry out the purpose and intent of all the laws pertaining to fish, game, and fur-bearing animals, game and non-game bird propagation, protection, conservation and management of this act; provided, however, that it shall not have authority to issue permits to anyone to carry firearms within the confines of the state of Montana, except to regularly appointed officers and/or fish and game wardens who are paid by the state of Montana.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935.

Fish and Game Commission Without Power to Condemn Site for Fish Rearing Pond

Held, prior to amendment by Ch. 200, L. 1935 that the statute granting certain powers to the fish and game commission

(sec. 3653) does not in express terms nor by necessary implication grant it the power to condemn a site for the purpose of constructing a fish rearing pond, and that, such being the case, the presumption obtains that the legislature intended that the necessary property should be acquired by contract. *State et al. v. Aitchison et al.*, 96 M 335, 338, 30 P 2d 805.

3654. Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of ten dollars (\$10.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission receive as said per diem a sum in excess of four hundred dollars (\$400.00) in any one year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid from the fish and game fund of the state, upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927.

3655. State fish and game warden, qualifications, duties. The state fish and game commission shall appoint and employ a state fish and game warden, who shall continue in the office at the pleasure of said commission. He shall be a person having experience, special training and skill in wild life protection, conservation, and management. He shall be the secretary of the state fish and game commission, attend the meetings of said commission, and keep a record of all of its transactions and shall make and keep an inventory showing the description and value of all property owned by the state and under the administration of said commission. He shall be the administrative agent of the state fish and game commission, custodian of the property and records of the fish and game department, and shall maintain his office at the seat of the state government. He shall devote all his time to his official duties, and such state fish and game warden shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state game warden or the state fish and

game warden. His powers and duties shall include those of a deputy state fish and game warden hereinafter enumerated. He shall be subject to the supervision and control of said commission and may be removed from office by said commission for neglect of duty, incompetency, or other good cause. The state fish and game warden shall be paid a salary fixed by the commission not exceeding in amount three thousand six hundred dollars (\$3,600.00) per year, and in addition thereto shall be allowed his actual and necessary traveling expenses while away from the seat of government upon official business connected with his office, but in no instance shall he be allowed as expenses a sum in excess of two thousand dollars (\$2,000.00) in any one year, the same to be paid upon proper vouchers from the fish and game fund of the state.

History: Earlier acts relative to the fish and game warden were Secs. 1949-1979, inc., Rev. C. 1907; these sections together with several acts amendatory thereof were superseded by chapter 193, L. 1921. This section en. Sec. 6, Ch. 193, L. 1921; re-en. Sec. 3655, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1925; amd. Sec. 2, Ch.

59, L. 1927; amd. in part by Sec. 1, Ch. 163, L. 1931, changing the salary of the state fish and game warden.

References

State ex rel. Nagle v. Sullivan et al., 98 M 425, 40 P 2d 995.

3656. Deputy fish and game wardens—appointment. The state fish and game warden, by and with the consent and approval of the commission, shall have power to employ, and appoint a number of deputy state fish and game wardens not in excess of twenty-two for the proper enforcement of the fish and game laws of the state, or for such purposes as the warden may direct who shall be peace officers and hold their offices for such time as the warden may direct, and who may be removed from office by said warden at any time for cause, after due hearing before said commission. The said commission shall assign to each deputy state fish and game warden, appointed or employed the territory or district in which he is to perform his duties and work, which may be changed at any time by said commission. Said deputy fish and game wardens shall perform their duties at the direction of, and subject to the supervision and control of the state fish and game commission and the state fish and game warden; provided, however, the commission may employ for a limited period of time, special deputy game wardens to patrol said districts and enforce the game and fish laws of the state of Montana therein, and to perform such duties in said districts as may be prescribed by said commission for the limited time for which they are so employed; and further, such special deputy game wardens shall receive in compensation not to exceed one hundred twenty five dollars (\$125.00) per month and actual expenses.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 197, L. 1925; amd. Sec. 3, Ch. 59, L. 1927.

3658. Deputy state fish and game wardens—qualifications. All appointments of salaried deputy fish and game wardens shall be made under rules adopted and promulgated by the commission; such examination shall embrace an investigation of the character, habits, and qualifications of the applicant as well as his knowledge of the state fish and game laws, and the duties and responsibilities appertaining to the office of deputy fish and game warden. No person shall be appointed a salaried deputy state fish

and game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office.

History: En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R. C. M. 1921.

3658. Political activity prohibited. While retaining the right to vote as he may please, and to express his opinions on all political questions, no fish and game warden or deputy shall take any active part in political management or political campaigns, nor shall he use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921; re-en. Sec. 3658, R. C. M. 1921.

References

State ex rel. Nagle v. Sullivan et al., 98 M 425, 40 P 2d 995.

3659. Qualifications, powers and duties of deputy game wardens. The deputy state fish and game wardens employed and appointed by virtue of this act shall be persons who have had experience, training, and skill in protection, conservation, and propagation of wild life, game, and fur-bearing animals, fish and game birds, and who shall be interested in said work; they shall devote all of their time for which they are appointed, to their official duties, it shall be their duty to see that the laws of the state of Montana and the laws, orders, rules and regulations of the state fish and game commission with reference to the protection, preservation and propagation of game and fur-bearing animals, fish and game-birds are strictly enforced; it shall be their duty to see that all those who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses. They shall have authority to serve subpoenas issued by any court for the trial of offenses against any of the fish and game laws of the state; they shall have authority to make a search, when they have reasonable cause to believe that any of the game, fish, birds, or quadrupeds, or any parts thereof, have been killed, captured, taken or possessed, in violation of the laws of this state, and without search warrant, to search any tent not used as a residence, boat, car, automobile, or other vehicle, box, locker, basket, creel, crate, gamebag, or other package and the contents thereof to ascertain whether any of the provisions of the laws of this state or the rules and regulations of the fish and game commission, for the protection, conservation or propagation of game and fish or game birds or fur-bearing animals have been violated, and with a search warrant to search and examine the contents of any dwelling house or other building, to seize and confiscate all game, fish, game-birds, and fur-bearing animals or any parts thereof, possessed in violation of the law, or the orders, rules and regulations of the commission, or showing evidence of illegal taking, and seize and confiscate all devices used in the taking of game and fur-bearing animals, fish or game birds illegally, and to hold the same subject to law or the orders of said state fish and game commission; to arrest without warrants any persons committing in their presence any offense against the fish and game laws of the state of Montana, or against any orders, rules and regulations of the commission violation of which has been made a misdemeanor by the provisions

of this act, and to arrest without warrant any person who they have reasonable and probable cause to believe has committed any such offense and to take such person immediately before a magistrate having jurisdiction of the same, and to exercise such other powers of peace officers in the enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, or of judgments obtained for the violation thereof, not herein specifically provided. It shall be their duty at all times to assist in the protection, conservation and propagation of fish, game, and fur-bearing animals, game and non-game birds, and to assist in the planting, distributing, feeding and caring for fish, game and fur-bearing animals, and game and non-game birds; it shall be their duty when ordered by the state fish and game commission, to assist in the destruction of predatory animals, birds, and rodents; it shall be their duty to do and perform all other duties prescribed from time to time by the state fish and game commission, and to make a monthly report to said commission correctly and truthfully informing the said commission of just what each said deputy fish and game warden has done during each day of the preceding month, with regard to the enforcement of the fish and game laws of this state, showing where his duties called him, and what he was called upon to do, and said report shall contain any pertinent recommendations said deputy may see fit to make. No deputy or special deputy fish and game warden shall have authority to compromise or settle out of court, any violations of the state fish and game laws.

History: En. Sec. 10, Ch. 193, L. 1921;
re-en. Sec. 3659, R. C. M. 1921; amd. Sec.
5, Ch. 192, L. 1925.

References
Rosenfeld v. Jakways et al., 67 M 558,
564, 216 P 776.

3660. Oath and bond of state fish and game warden and deputy wardens. Before entering upon his official duties, the state fish and game warden and deputy wardens shall take and subscribe the constitutional oath of office and shall in addition thereto swear, or affirm, that he holds no other position or office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

The state fish and game warden shall execute and file with the secretary of state a bond to the state of Montana in the sum of ten thousand dollars, with sureties thereon approved by the state treasurer, and each salaried deputy state fish and game warden shall file a bond with the secretary of state, to the state of Montana, in the sum of one thousand dollars, with sureties thereon approved by the state treasurer, conditioned for the faithful performance of the duties of their respective offices, and that they, respectively will account for and pay over, pursuant to law, all moneys received by them respectively. The state fish and game warden and each of said deputies shall be reimbursed for the premium on said bonds from the state fish and game fund, upon the furnishing of a proper voucher therefor.

History: En. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R. C. M. 1921.

3661. Deputy fish and game wardens—removal—rating—salary and expense. The state fish and game commission shall have power to remove,

suspend without pay, to reduce in rank, to act as a trial board in hearing and passing upon charges against deputy state fish and game wardens, and to rate all such deputies on the basis of merit and efficiency, in accordance with such rules and regulations as it may adopt to secure a proper rating of deputy state fish and game wardens or to carry out the provisions of this section. It shall rate all deputy state fish and game wardens on the basis of merit and efficiency in two grades, to be known as the first and second grades. Deputy state fish and game wardens shall not be removed unless furnished with a reason for removal and given a hearing in his own defense. The salary of the deputy state fish and game wardens shall be as follows: Those of the first grade a sum not exceeding one thousand eight hundred dollars (\$1800.00) per annum provided that the commission may at its discretion pay not more than six (6) first grade men a salary not exceeding twenty-one hundred dollars (\$2100.00) per year; and those of the second grade a sum not exceeding one thousand six hundred fifty dollars (\$1650.00) per annum.

Each deputy state fish and game warden shall be allowed his actual and necessary traveling expenses while away from his place of residence upon official business connected with his office, not exceeding the sum of six hundred dollars (\$600.00) per year, unless special work shall be ordered by the fish and game commission; said expenses to be approved by said state fish and game warden and to be paid upon proper voucher from the state fish and game fund.

History: En. Sec. 12, Ch. 193, L. 1921; re-en. Sec. 3661, R. C. M. 1921; amd. Sec. 6, Ch. 192, L. 1925; amd. Sec. 4, Ch. 59, L. 1927.

3662. Special deputy fish and game wardens. The state fish and game warden may appoint any one who is a bona fide resident and citizen of the state as a special deputy fish and game warden. Such special deputy fish and game warden shall hold his appointment during the pleasure of the commission, or state game warden, and shall have the same powers and duties as other deputy state fish and game wardens, but shall receive no pay for his service, except that the commission may in its discretion, allow him his actual and necessary traveling expenses, and all expenses paid by him for transportation, board and lodging of persons under arrest for violation of the game, fish and fur-bearing animal laws, orders, rules, or regulations, which, if allowed shall be paid upon proper voucher from the state fish and game fund.

History: En. Sec. 13, Ch. 193, L. 1921; re-en. Sec. 3662, R. C. M. 1921; amd. Sec. 7, Ch. 192, L. 1925.

3663. Sheriffs, constables, peace officers and state forest officers. All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, are hereby made ex-officio deputy state fish and game wardens, without pay, except that the commission may, in its discretion, allow actual and necessary traveling expenses, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds, and shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed

deputy state fish and game wardens, and it is hereby made their duty to assist, wherever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R. C. M. 1921.

3664. Superintendent of state fisheries—appointment and bond. The state fish and game commission shall have general supervision over all hatcheries in the state, and shall appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist. He shall act solely under the direction of the state fish and game commission. The output of all state hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution within the state, such distribution to be under the direction of said superintendent of fisheries subject to an official order of the commission. He shall have the power to exchange spawn or fish with other states or persons for distribution in this state. Before entering upon his official duties the superintendent so appointed and employed by said commission shall execute and file a bond with the secretary of state, in the sum of two thousand dollars (\$2000.00) with sureties thereon, approved by the state treasurer, to the state of Montana, conditioned for the faithful performance of his official duties, and that he will account for and pay over, pursuant to law, all moneys received by him. He shall be reimbursed for the premium on said bond from the fish and game fund of the state, upon presentation of a proper voucher therefor.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925.

3665. Superintendent of state fisheries—salary. The superintendent of state fisheries, appointed and employed by the commission shall receive for his services a salary of not to exceed thirty six hundred dollars (\$3600.00), and his actual and necessary traveling expenses while absent from his place of residence and upon official business connected with his office, but in no instance shall he be allowed for such expenses a sum in excess of one thousand five hundred dollars (\$1500.00) in any one year, which shall be paid from the state fish and game fund on proper vouchers.

History: En. Sec. 16, Ch. 193, L. 1921; re-en. Sec. 3665, R. C. M. 1921; amd. Sec. 9, Ch. 192, L. 1925; amd. Sec. 5, Ch. 59, L. 1927.

3666. Powers and duties of superintendent of state fisheries. The superintendent of state fisheries shall have full control of all state fish hatcheries and shall be responsible for their construction, maintenance, and operation, subject at all times to an order of the commission. All such construction work done under contract or otherwise, shall be done under control and supervision of said superintendent of fisheries, subject to his acceptance under the direction of the commission. He shall have charge of the work of taking and collecting all spawn, the hatching of all spawn and eggs, rearing, propagating and distribution of fry, fingerlings and fish, and with the consent of the state fish and game commission, he shall have power and authority to employ such assistance and help as may be necessary in the operating of fish hatcheries of the state, the gathering of eggs, or the performance of any other work in connection with the protection, propagation and distribution of fish and fry. He shall have authority with

the consent of the commission, to purchase so many eyed eggs from time to time, as may be necessary in order to keep the hatcheries of the state supplied with eggs and in full operation, the quality and kind of species of eggs to be determined by the superintendent or commission; provided, however, that the said superintendent shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state, to supply said hatcheries, and for that purpose shall have the right and authority to build, equip, and use fish traps and nets at any and all seasons of the year in all the public waters of the state. Said superintendent shall have authority when authorized to by the commission, to purchase the eyed eggs of fish not propagated in this state, for the purpose of stocking the waters in this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R. C. M. 1921; amd. Sec. 10, Ch. 192, L. 1925.

3667. State fish and game commission to control state waters for propagation of fish. From and after the passage of this act, the state fish and game commission is hereby given the right and authority to control the waters of any lake, pond, or stream, which may lie wholly within the limits of the land owned by the state of Montana, so far as the use of said lake, pond or stream for the breeding and propagation of game fish is concerned. Before such right to control any of such lake, pond or stream shall inure to the state fish and game commission, it shall be necessary for the chairman of said commission to notify the state land agent that any such lake, pond or stream is wanted for the purpose herein mentioned, giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed, whereupon it shall be the duty of the state land agent to make such entry upon his books and maps as may serve as notice to any lessor or purchaser of the right claimed by the state, in any such lake, pond or stream, and said state land agent shall notify any lessor or purchaser or applicant to lease or purchase of the fact that a right to the use of such lake, pond or stream is so claimed; provided, however, that no such right as is hereby given shall continue for more than one year after such land is sold by the state, and further provided, that should it be found that the right to the control of any such lake, pond or stream heretofore granted lessens the value of said land or prevents the ready sale thereof, that then and in that event the right hereby granted to the state fish and game commission may be terminated upon giving sixty days' notice of such termination to the chairman of the state fish and game commission.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R. C. M. 1921.

3668. State fish and game commission shall procure plans for buildings. It shall be the duty of the state fish and game commission of the state of Montana to procure suitable plans and specifications for any buildings erected by their authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars, and said commission shall cause said buildings to be built, erected and completed in accordance with such plans and specifications, by contract, said contract to be let after publishing said notice stating the time

and place of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said building is to be erected, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and re-advertise as often as may be necessary. The contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the commission, or some member of the commission.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R. C. M. 1921.

3669. Transfer of funds. All funds, appropriations and moneys provided for the purpose of administering or enforcing the present fish and game laws of this state, and all funds, appropriations and moneys belonging to the fish and game fund of this state, and now under the control or in the possession of any officer, person or department of this state, shall be and hereby are placed under the control of the commission hereby created, and shall be collected and disbursed by said commission, pursuant to existing laws and provisions of this act.

History: En. Sec. 20, Ch. 193, L. 1921; re-en. Sec. 3669, R. C. M. 1921.

3670. State fish and game fund. All sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from the appropriations, or received by the commission from any other source, shall be turned over to the state treasurer, and placed by him in a special fund known and designated as the "state fish and game fund," provided, that out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution. Said fund is hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the state fish and game commission under the terms of this act, and said funds shall be expended for any and all such purposes, by said commission, subject to the proper audit and allowance by the state board of examiners and by appropriation by the legislative assembly of each session; provided, however, that all equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission must be requisitioned for through the state purchasing agent, and the state purchasing agent shall purchase all necessary equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R. C. M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933.

3671. State fish and game warden—clerk and stenographer. The state fish and game warden appointed and employed by the state fish and game commission of this state, shall have the right, subject to the approval of the commission, to employ such clerical and stenographic assistance as may be necessary for him to properly maintain his office and perform his official duties in his office, and the person or persons performing the same shall be paid monthly out of the fish and game funds of the state upon proper voucher.

History: En. Sec. 22, Ch. 193, L. 1921; re-en. Sec. 3671, R. C. M. 1921.

3672. Salaries, per diem and expenses, how paid. All salaries, per diem, expenses and claims incurred by the state fish and game commission, or any person appointed or employed by them, shall be allowed by the state board of examiners, upon the presentation of proper vouchers therefor, and shall be paid out of the state fish and game funds, upon warrants properly drawn thereon; provided, however, that the aggregate of all salaries, per diem, expenses and claims presented for payment shall not exceed at any time the total amount in said state fish and game fund. The state fish and game commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all deputy state fish and game wardens shall be approved by the state fish and game warden, before they are paid, and the salary, per diem or expenses of any employee employed in the propagation or distribution of fish shall be approved by the superintendent of state fisheries, before they are paid. All items of expense, amounting to more than one and one-half dollars incurred by any one employed in the state fish and game department, shall be evidenced by a proper voucher or receipt, before they shall be approved, allowed, or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R. C. M. 1921.

3673. Reports of state fish and game warden, superintendent of state fisheries and commission. The state fish and game warden, and the superintendent of state fisheries, shall, on or before the first day of June of each year, make a written report to the state fish and game commission of the operation of their departments during the preceding year, and the state fish and game commission shall thereafter, and on or before the first day of November of each year, transmit such report, together with a detailed report to the governor, of its work and of moneys collected or received, with the sources thereof, and all disbursements and expenditures, with the details connected therewith, the result of investigations made by it during the preceding year ending April 30th, with recommendations as to measures to be taken or enacted to conserve and propagate the fish, game, game birds and game, and fur-bearing animals of the state, and if such recommendation embody legislation, drafts of bills to accomplish the purposes desired.

The governor is authorized to have such reports printed.

History: En. Sec. 24, Ch. 193, L. 1921; re-en. Sec. 3673, R. C. M. 1921.

3674. Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the state fish and game warden, in

co-operation with the attorney general, shall make a compilation of the laws relating to fish, game, game birds and animals, as amended and in force at the date of such compilation, and properly index the same. Copies of said compilation sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. It shall be the duty of the state fish and game warden to distribute to justices of the peace, deputy fish and game wardens, and other officers and persons empowered to issue licenses for hunting, fishing and trapping, a supply of such compilation sufficient to permit one copy thereof to be given any one desiring the same. The expense incurred by printing said laws shall be paid out of the state fish and game fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R. C. M. 1921.

3675. Duty of attorney general to advise commissioners—prosecuting attorneys to prosecute complaints. The attorney general of the state is the legal adviser of the commission, and shall, together with the several county attorneys, enforce the provisions of this act.

History: En. Sec. 26, Ch. 193, L. 1921; re-en. Sec. 3675, R. C. M. 1921.

3676. Creating fish and game preserves, refuges, sanctuaries, rest grounds, closed districts and closed seasons. Preserves, refuges, sanctuaries, rest grounds, or closed districts made or created by said commission, and any land or water areas or portions thereof, closed by said commission, shall be conspicuously posted for a period of fifteen (15) days, with posters setting forth their purposes and the penalties for violating the orders, rules and regulations of the state fish and game commission applicable to them. Not less than fifteen (15) days before any fish and game district, closed district, preserve, refuge, sanctuary, rest ground, so created by said commission, or closure of land or water areas becomes effective, publication shall be made as provided in section 3677 hereof of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary or rest ground, so created by said commission and closed waters, such boundaries to be accurately designated by definite topographic or public land survey. The hunting, pursuing, capturing, killing or taking of any fish or game animals or game birds or fur-bearing animals in violation of the rules, regulations or orders of the state fish and game commission governing any closed season, fish and game district, refuge, sanctuary, preserve, rest ground or closed land or water area, promulgated by said commission shall be punishable with the same penalties as provided for the violation of the state fish and game laws of this state, regarding closed seasons. All preserves or refuges heretofore created by the laws of this state are continued in force and effect until such time as the same are changed by the commission in the manner herein designated; provided that said commission shall have the right, power, and authority, when properly petitioned, to alter, and change the boundaries of, or entirely do away with and abandon any preserve or refuge, when, in the opinion of said commission, it is to the best interests so to do.

History: En. Sec. 27, Ch. 193, L. 1921; re-en. Sec. 3676, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1933.

3677. Posting and publication of orders, rules and regulations of commission. The orders, rules and regulations of the state fish and game commission shall be published and posted in the following manner:

(1) Those having general application throughout the state shall be published in such manner and to such an extent as the state fish and game commission deems necessary and may direct.

(2) Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable, and shall be posted in three conspicuous places in the locality or district in which they are applicable.

History: En. Sec. 28, Ch. 193, L. 1921; re-en. Sec. 3677, R. C. M. 1921; amd. Sec. 11, Ch. 192, L. 1925.

3678. Effect of orders, rules and regulations. All orders, rules and regulations for the enforcement of the powers granted to the state fish and game commission shall take effect and be in force, after publication and posting as in this chapter prescribed, and when so published or posted shall constitute legal notice.

History: En. Sec. 29, Ch. 193, L. 1921; re-en. Sec. 3678, R. C. M. 1921.

3679. Penalty for violations of orders, rules and regulations of commission. Any person who shall violate any of the provisions of any order, rule, or regulation of the state fish and game commission made pursuant to the authority given it under this act, shall be deemed guilty of a misdemeanor, and upon conviction be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than one hundred eighty (180) days, or by both such fine and imprisonment in the discretion of the court.

History: En. Sec. 30, Ch. 193, L. 1921; re-en. Sec. 3679, R. C. M. 1921; amd. Sec. 2, Ch. 87, L. 1933.

3680. Effect partial invalidity of act. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

History: En. Sec. 32, Ch. 193, L. 1921; re-en. Sec. 3680, R. C. M. 1921.

CHAPTER 308

FISH AND GAME LAWS—LICENSES—PROTECTION AND PROPAGATION OF FISH AND GAME

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3681. Definitions. For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game, and fur-bearing animals be lawfully taken.

Closed season. The time during which game birds, fish, game, and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and line or rod in hand.

Upland game birds. Sharptailed grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, and wild turkey.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails, shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow-legs; and mourning or turtle doves.

Non-game birds. All wild birds not defined herein as upland game birds or migratory game birds shall be deemed non-game birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, and bear.

Fur-bearing animals. Marten or sable, otter, fox, muskrat, fisher, mink, raccoon, and beaver.

Predatory animals. Coyote, wolf, wolverine, mountain lion, lynx, weasel, skunk, and civit cat, black-footed ferret, and bobcat.

Game fish. Mountain trout, cutthroat or native trout, (*Salmo Mykiss*); rainbow trout, (*Salmo Irideus*); eastern brook trout, (*Salvelinus Fontinalis*); grayling, (*Thymallus Montanus*); steelhead trout, (*Salmo Rivalaris*); Dolly Varden trout, (*Salvelinus Malma*); Loch Leven trout, (*Salmo Trutta Levenensis*); Chinook salmon, (*Oncorhynchus Tschawytscha*); silver salmon, (*Oncorhynchus Kisutch*); Sockeye salmon, (*Oncorhynchus Nerka*); Rocky Mountain whitefish, (*Coregonus Williamsoni*); yellow perch, ringed perch, (*Perca Flavescens*); large-mouth black bass, (*Micropterus Salmoides*); small-mouth black bass, (*Micropterus Dolomieu*); common sunfish, pumpkinseed, (*Lepomis Gibosus*); Great Northern pike, Northern pickerel, (*Esox Lucius*); pike perch, wall-eyed pike, pike, yellow pike, (*Stizostedion Vitreum*); Mackinaw trout, (*Salvelinus Namaycush*).

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R. C. M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927.

3682. License required. It shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to pursue, hunt, trap, take, shoot, kill or attempt to trap, take, shoot or kill, any game animal, or any game bird, or any fur-bearing animal, or to take, kill, trap, or fish, for any fish within this state, or to have, keep or possess within this state any game animal, game bird, fur-bearing animal, or game fish, or parts thereof, except as herein provided or shall be provided by the state fish and game commission, or for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill, any game animal, game bird, or fur-bearing animal, or take, kill, trap, or fish for, any fish, except at the places and during the periods and in the manner herein defined or shall be defined by the state fish and game commission, or for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill any game animal, game bird, or fur-bearing animal, or take, kill, trap, or fish for, any fish within this state, or have, keep, possess, sell, purchase, ship or reship, any imported or other fur-bearing animal, or parts thereof, without first having obtained a proper license or permit from the commission so to do.

History: En. Sec. 2, Ch. 238, L. 1921; re-en. Sec. 3682, R. C. M. 1921; amd. Sec. 13, Ch. 192, L. 1925; amd. Sec. 7, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3683. Classes of licenses. Licenses shall be divided into the following classes:

- Class A. Resident game birds and fishing license;
- Class A A. Resident big game license;
- Class A A A. Resident Sportsmen's license;
- Class B. Non-resident fishing license;
- Class B-1. Non-resident game bird license;

- Class B-2. Non-resident big game license;
- Class C. Alien fishing license;
- Class C-1. Alien game bird license;
- Class C-2. Alien big game license;
- Class D. Trapper's license;
- Class E. Fur dealer's license.

History: En. Sec. 3, Ch. 238, L. 1921; re-en. Sec. 3683, R. C. M. 1921; amd. Sec. 8, Ch. 59, L. 1927; amd. Sec. 1, Ch. 161, L. 1931.

3684. Application for license. Such license shall be procured from the state fish and game warden, or any salaried or special deputy state fish and game warden, any justice of the peace, or any person authorized by the state fish and game warden. Before giving any person other than a salaried deputy state fish and game warden, or any justice of the peace, the authority to sell or issue licenses, the state fish and game warden may exact from such person a bond not to exceed the sum of one thousand dollars, to be approved by the state fish and game warden, conditioned that such person will turn over to the state fish and game warden all sums received by him for such licenses, which said bond shall run to the state of Montana. The applicant shall fill out a blank application furnished by the commission, stating the name, age, occupation, place of residence and postoffice address of the applicant, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts or descriptions as may be required by the commission. Said application shall be subscribed and sworn to by the applicant before any officer authorized to administer oaths in this state, and the persons or officers hereby authorized to issue licenses are also hereby authorized to administer oaths to applicants for such licenses.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R. C. M. 1921.

3685. Fees and powers under licenses—tagging of carcasses and reports of killing of elk or deer—transfer of money from fish and game fund to bounty fund. Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of two dollars (\$2.00) as a license fee, and shall obtain a license of Class A, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess game birds and to fish with hook and line or rod in hand as authorized by this act.

Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of one dollar (\$1.00), and shall obtain a license of class A A, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess any of the game animals of this state as authorized by this act; provided, however, that said applicant, in order to obtain said class A A license, must be the owner and possessor of a class A license, as herein above defined.

Said applicant, if a resident "sportsman" of the state of Montana and a citizen of the United States, may pay to the officer or person countersigning and issuing the license the sum of five dollars (\$5.00) as a license fee, and shall obtain a license of class A A A, herein designated as a resident

"sportsmen's" license, which shall entitle the holder to pursue, hunt, kill, capture, take and possess game, game birds and game animals, and to fish with hook and line or rod in hand as authorized by this act.

All citizens of the United States who have lived in this state at least six months immediately preceding their application for a license, or officers, soldiers, sailors and marines of the United States army, navy, or marine corps, shall be deemed resident citizens for the purpose of this section, as well as officers of the forest service and of the biological survey of the United States department of agriculture.

Said applicant, if a non-resident of the state or a resident for less than six months immediately preceding his application for a license and a citizen of the United States, shall pay to the officer countersigning and issuing the license the sum of three and 50/100 dollars (\$3.50) as a license fee, and shall obtain a class B license, which shall entitle the holder to fish with hook and line, or rod in hand, as authorized by this act; and such non-resident, on like application and on the payment of the sum of ten dollars (\$10.00) as a license fee, shall obtain a class B-1 license, which shall entitle him to pursue, hunt, shoot, kill and take game birds, as authorized by this act; and such non-resident, on like application and on the payment of the sum of thirty dollars (\$30.00), as a license fee, shall obtain a license of class B-2, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess game animals, as authorized by this act.

Said applicant, if an alien, resident or non-resident, shall pay to the officer countersigning and issuing the license, the sum of ten dollars (\$10.00) as a license fee, and shall obtain a class C license, which shall entitle him to fish with hook and line or rod in hand, as authorized by this act; and such alien, on like application and on the payment of the sum of thirty dollars (\$30.00) as a license fee, shall obtain a license of class C-1, which shall entitle him to pursue, hunt, shoot, kill and take game birds, as authorized by this act; and such alien, on like application and on the payment of the sum of fifty dollars (\$50.00) as a license fee, shall obtain a license of class C-2, which shall entitle him to pursue, hunt, shoot, kill, capture, take and possess game animals, as authorized by this act, provided, however, that any person in possession of first citizenship papers shall not be considered a resident of the state of Montana for the purpose of this act.

To every license, whether issued to a resident, non-resident or alien, which authorizes the licensee to kill elk or deer in this state, there shall be attached to said license certain tags, coupons or other markers, the form of which shall be prescribed by the state fish and game commission, and when any person shall take or kill any deer or elk under such license such person shall immediately thereafter detach from his license, and attach in plain sight to the carcass of said animal or animals the proper tag, coupon or other marker, which said tag, coupon or other marker shall be kept attached thereto so long as any considerable portion of the carcass remains unconsumed. When the proper tag, coupon or other marker is so attached to the said game so killed, the same may be possessed, used, stored and transported; provided the necessary permit to transport the same accompanies the shipment. To said license to hunt or take elk or deer shall

also be attached a card, which said card shall on or before the first day of January of the year following the date of the issuance of said license, be returned by the holder of said license to the fish and game commission and a report made to said commission of the game taken under said license and the place where the same was taken, it being the intent of this act to require every licensee to make said report whether any game was taken under said license or not. It shall be unlawful and a misdemeanor punishable, accordingly, for anyone killing any deer or elk under said license, to fail or neglect to attach the tag, coupon or other markers so provided by said license to any deer or elk killed by them immediately after the same had been killed or to fail to keep said tag, coupon or other marker attached to said deer or elk or portions thereof while the same is possessed by him.

The applicant for a class D license, or trapper's license, must be the owner and in possession of a class A-2 license, and upon the payment of the sum of ten dollars (\$10.00) to the officer to whom the application for a class D license is made, shall receive and obtain a class D license, or trapper's license, which shall authorize the holder thereof to trap fur-bearing animals within the state at such times and in such manner as may be lawful so to do under the laws of this state and the regulations of the fish and game commission, and at such places as may be designated in said license.

All sums collected for licenses sold, or received for permits issued, from the sale of seized game, or from fines, or the sale of firearms or other chattels confiscated, from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the state fish and game commission from any and all other sources are hereby appropriated to and placed under control of the state fish and game commission. All moneys so received shall be remitted by the state fish and game warden to the state treasurer to be by him placed to the credit of the fish and game fund.

The sum of seven thousand five hundred dollars (\$7,500.00) shall be transferred on or before January first of each year from the fish and game fund to the bounty fund of the state to be used to pay bounties on predatory animals as provided by law; said sum of seven thousand five hundred dollars (\$7,500.00) shall be matched with a like sum of the said bounty fund money derived from the tax on livestock now provided by law providing a fund of fifteen thousand dollars (\$15,000.00). At the close of any bounty paying season of any year fifty per centum (50%) of any unexpended balance shall be re-transferred to the state fish and game fund. Nothing herein contained shall be so construed as to prevent the livestock commission from expending from its bounty fund any part thereof in excess of fifteen thousand dollars (\$15,000.00), which may be necessary for the purpose of paying bounties.

History: En. Sec. 5, Ch. 238, L. 1921; re-en. Sec. 3685, R. C. M. 1921; amd. Sec. 4, Ch. 77, L. 1923; amd. Sec. 1, Ch. 161, L. 1925; amd. Sec. 14, Ch. 192, L. 1925; amd. Sec. 9, Ch. 59, L. 1927; amd. Sec. 2, Ch. 161, L. 1931.

3685.1. Temporary non-resident fishing license. That in addition to the licenses provided for in section 3683, there shall be an additional class known as class BB, which shall be a temporary, non-resident fishing license.

History: En. Sec. 1, Ch. 41, L. 1935.

3685.2. Procuring of license. Such license may be procured in the manner provided by law for the procuring of other classes of licenses.

History: En. Sec. 2, Ch. 41, L. 1935.

3685.3. License fee—rights under license—term. An applicant for such temporary, non-resident license, if a citizen of the United States and a non-resident of the state of Montana, shall pay to the officer or person counter-signing and issuing such license the sum of \$1.50 as a license fee and shall obtain a license of class BB, which shall entitle the holder to fish with hook and line or rod in hand, as authorized and limited by law, for a period of fifteen days from and after the date of issuance of such license.

History: En. Sec. 3, Ch. 41, L. 1935.

3685.4. Act construed as providing additional non-resident license. This act shall not be construed so as to repeal existing provisions of law for class B non-resident fishing license, but shall be construed as providing an additional license for non-residents who wish to limit the period to fifteen days.

History: En. Sec. 5, Ch. 41, L. 1935.

3686. Repealed—Chapter 77, laws of 1923.

3687. Disposition of fees. The license fees provided to be paid in this section, shall be remitted by the officers or persons issuing said licenses on the tenth and twenty-fifth days of each month to the state fish and game warden, with a schedule setting forth the name and residence of each licensee, and the serial number and class of, and the amount paid for, each license issued. The fee provided to be paid to the officer or person issuing a license shall be retained by him for his compensation. The license fees received by the state fish and game warden shall be remitted on the tenth and twenty-fifth days of each month with a schedule setting forth the name and residence of each licensee, the serial number and class of, and the amount paid for, each license, to the state treasurer, and placed by him in a special fund known and designated as the state fish and game fund. Said fund is hereby exclusively set apart and made available for the payment of salaries, per diem, fees, expenses and expenditures of every sort and kind whatsoever authorized to be made by the state fish and game commission, and said funds shall be expended for any and all such purposes by said commission, subject to the proper audit and allowance by the state board of examiners.

History: En. Sec. 7, Ch. 238, L. 1921; re-en. Sec. 3687, R. C. M. 1921.

3688. Form and contents of licenses. The form of the license shall be determined and the license blanks prepared by the commission and by it furnished to the officers and persons authorized to issue the same. Said licenses shall be issued in the name of the commission, and be counter-signed by the officer or person issuing the same. Each license issued shall be signed by the licensee in ink or indelible pencil on the face thereof.

History: En. Sec. 8, Ch. 238, L. 1921; re-en. Sec. 3688, R. C. M. 1921.

3689. Carrying and exhibiting license. It shall be unlawful and a misdemeanor punishable as in this act hereinafter provided for any person to

whom a license or permit has been issued to fish for or take any fish, or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, or trap, or take, any fur-bearing animal in this state unless at the time he shall have such license or licenses, or permit, in his possession, and it shall be unlawful to refuse to exhibit the same for inspection to any deputy state fish and game warden or other officer requesting to see the same.

History: En. Sec. 9, Ch. 238, L. 1921; re-en. Sec. 3689, R. C. M. 1921; amd. Sec. 10, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3690. Termination of license. Such licenses shall be void after the thirtieth day of April next succeeding their issuance.

History: En. Sec. 10, Ch. 238, L. 1921; re-en. Sec. 3690, R. C. M. 1921.

3691. Animals which may be hunted without license—persons under fifteen years of age not required to have license. The provisions of the act shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory animals, prairie dogs, ground squirrels, jack rabbits, gophers, or English sparrows, crows, hawks, fish ducks, blue heron, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies, jays and eagles, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time; and minors under fifteen (15) years of age may pursue, hunt, shoot, kill, take and capture game birds and fish for and take fish, during the open season without a license.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R. C. M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931.

3691.1. Penalty for violations—forfeiture of license. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction and unless as herein otherwise provided, shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than one hundred eighty (180) days or by both such fine and imprisonment; and in addition thereto, shall, in the discretion of the court, forfeit his license to hunt, fish or trap within this state for a period of one (1) year from the date of his conviction.

History: En. Sec. 4, Ch. 161, L. 1931.

3692. Alteration or transfer of license. No person shall at any time alter or change in any material manner, or loan or transfer to another, any license issued in pursuance to the provisions of this act, nor shall any person other than the person to whom it is issued use the same. Any person who shall swear or affirm to any false statement in application for a hunting, fishing or trapping license, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished accordingly. Any false statement contained in any application for such license shall render the license null and void.

History: En. Sec. 12, Ch. 238, L. 1921; re-en. Sec. 3692, R. C. M. 1921.

3693. Report. On the thirtieth day of April of each year, each deputy or special deputy fish and game warden and each other officer or person

authorized to issue licenses, shall detach the stubs of licenses issued by him, and forward the same, together with all unused licenses, securely attached to a report of the number issued and the amount of license money received, to the state fish and game warden, whose duty it shall be to see that the proper returns are made to him by all such wardens, other officers or persons; and the state fish and game warden shall recapitulate and tabulate the total number of licenses of all kinds issued in the state and the fees received therefor, and he shall include such data in his report remitting the fees to the treasurer.

History: En. Sec. 13, Ch. 238, L. 1921; re-en. Sec. 3693, R. C. M. 1921.

3694. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any automobile or on or from any public highway in the state of Montana or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, or salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set; provided, however, that this does not prohibit the shooting of wild water fowl from blinds or over decoys with a gun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set, nor shall any game birds or game or fur-bearing animals be killed, taken or hunted from an aeroplane, nor shall any aeroplane be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any power boat, sail boat, or any boat under sail or any floating device towed by a power boat, sail boat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory water fowl, or game or fur-bearing animals, nor shall any person take into a field or forest or have in his possession while out hunting, any device or mechanism devised to silence or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm; nor shall any person chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that live-stock owners, employees of the state fish and game commission and of the United States bureau of biological survey may use dogs in the pursuit of stock killing bears, or other means of taking stock killing bears except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve hours apart; and provided further, that a person may take game birds during the open season thereof, with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game warden.

It shall hereafter be unlawful for any person to catch or take from the waters of this state more than twenty-five (25) fish in the aggregate, with a net weight of twenty (20) pounds and one (1) fish in any one (1) day, of the variety of fish designated herein as game fish, nor more than five (5) such game fish which are less than seven (7) inches in length, except sunfish, yellow perch, ring perch and bull heads, in any one (1) day. It is hereby declared to be the intention of this act to provide that twenty-five (25) fish, with net weight of not more than twenty (20) pounds and one (1) fish of any and all the game fish, shall constitute the limit for a day's fishing. It shall be unlawful for any person to be in possession of more than five (5) game fish which are less than seven (7) inches in length, or more than twenty-five (25) fish in the aggregate, or more than twenty (20) pounds net weight and one (1) fish or any and all kinds of game fish at any one (1) time. This section shall apply to both fresh game fish and to game fish which have been dried, salted or otherwise cured.

It shall be lawful to catch fish in the Yellowstone, Missouri and Kootenai rivers at any season of the year with hook and line, or rod in hand, and ling may be caught in said rivers at any season of the year with set-lines; provided, however, that the commission shall have the power to limit the fishing for ling to angling when it is ascertained that game fish are being caught with said set-lines. It shall be lawful to take by angling non-game fish in any quantity from any of the waters of the state during the open fishing season pertaining to such waters.

Game fish shall be taken only by angling, that is, by hook and line in hand or rod in hand; this does not prevent, however, the use of a landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a small hand net.

That from and after the twentieth day of May, 1931, it is hereby made unlawful for any person, persons, firm or corporation to sell or have in their possession, any salmon eggs or salmon spawn, or any imitations thereof, or substance prepared therefrom, and it shall also be unlawful for any person or persons to use in any of the waters of this state any salmon eggs or other fish spawn, or any imitation or substance prepared therefrom, as a fish bait or fish lure.

It shall be unlawful to catch any game fish through the ice, or through a hole in the ice, except in such waters as are designated under proper order of the state fish and game commission. In case any game fish is unintentionally taken contrary to the prohibitions or restrictions contained in this act, such fish shall be immediately liberated and returned to the water without unnecessary injury.

It shall be unlawful for any person between the fifteenth day of March and the twentieth day of May, both dates inclusive, of the same year, to catch or attempt to catch, in the waters of this state any fish whatsoever, except when license or permit has been given to seine, net or trap carp, buffalo-fish and suckers, and providing that the commission shall have the power and authority, whenever in its opinion conditions warrant it, to permit the sale of Rocky Mountain whitefish and Dolly Varden trout under

such rules, regulations and conditions as it may prescribe, and also, to suspend and set aside the maximum limit of fish of these varieties one may catch in a single day or have in his possession at one (1) time.

The state fish and game commission shall have the power to change or suspend the closed season on game fish so as to meet local conditions.

Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931.

3694.1. Penalty for violations. Any person who shall pursue, hunt, trap, possess, take, capture, shoot or kill any fish, game bird, game or fur-bearing animals or have, keep, possess, sell, purchase, ship or reship any game fish, game bird, game or fur-bearing animals of this state in any manner contrary to the provisions of this act or to the orders, rules and regulations of the fish and game commission made pursuant to the authority given it under this act, shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than one hundred eighty (180) days or by both such fine and imprisonment, and in addition thereto, shall, in the discretion of the court, forfeit his license to hunt, fish or trap within this state for a period of one (1) year from the date of his conviction.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 57, L. 1927; en. as Sec. 2, Ch. 162, L. 1931.

3695. Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish. Any person who owns or lawfully controls an artificial lake or pond may stock the same with fry procured from the federal or from the state government at the prevailing market price, providing there is a surplus of said fry, or from any other lawful source, and shall thereafter have the right and privilege to take from said lake or pond in any manner, except by the use of poison or explosives, the fish therein contained, and to sell and dispose of said fish and of eggs and fry therefrom. The words “artificial lake or pond” as herein used shall not be construed to include any natural pond or body of water created by natural agencies, but shall be limited only to such bodies of water as are created by the artificial diversion or storage of water and shall not exceed 500 acres of surface area. Provided, however, that such owner shall procure a license in the manner provided by the laws of the state of Montana, and shall furnish a good and sufficient bond to the state of Montana, in the sum of two hundred dollars (\$200.00), conditioned to the effect that he will not sell fish caught in any of the public water of this state, and also conditioned to the effect that such owner or holder will report to the state game warden the quantity of fish, fish eggs and spawn taken from said lake or pond, and sold from and planted in, said lake or pond during any

calendar year. Said report to be made under oath annually in the month of January of each year.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R. C. M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929.

3696. Open season for elk—waste of meat unlawful. The open season for elk shall begin October fifteenth (15th) and end November fifteenth (15th) both dates inclusive, of each year. The closed season for elk shall begin November sixteenth (16th) of each year and end October fourteenth (14th) of the following year, both dates inclusive; provided, however, that in all of that portion of Ravalli county drained by the west fork of the Bitter Root river and in all of that portion of Ravalli county lying west of the Bitter Root river and north of the confluence of the east and west forks of said Bitter Root river; the open season for elk shall begin with the twentieth (20th) day of September and end with the twentieth (20th) day of October, both dates inclusive, except, however, that the state fish and game commission may in its discretion shorten the open season in such territory in Ravalli county; provided further that during the open season one elk of either sex may be killed in that portion of Mineral county lying south of the Missoula river and east of the Little Saint Joe game preserve. During the open season for elk it shall be unlawful and punishable as hereinafter provided, for any person to shoot, or kill, or take or cause to be shot, or killed, or taken, more than one (1) elk, or for any person during the closed season for elk, to pursue, hunt, shoot, kill, take or capture or cause to be pursued, hunted, shot, killed, taken or captured, or attempt to shoot, kill, take or capture, any elk, or for any person responsible for the death of any elk to wilfully waste any portion or portions of said elk which are suitable for food; provided, also, that it shall be unlawful and a misdemeanor, punishable as in this act provided, for any person at any time to pursue, hunt for, shoot, kill, take or capture, or cause to be shot, killed, taken or captured, or attempt to shoot, kill, take, or capture, any elk within the counties or parts of counties hereinafter described and which are designated hereby as "preserve for elk," the same to remain closed until opened by the state legislature, or by order of the state fish and game commission, which commission is hereby authorized to provide limited open seasons in such counties and for such areas as in its judgment is warranted and to provide necessary rules and regulations governing such limited open seasons.

The following named counties, as a whole: Deer Lodge, Fergus, Chouteau, Valley, Golden Valley, Daniels, Roosevelt, Fallon, Wibaux, Richland, Granite, Phillips, Stillwater, Sanders, Silver Bow, Broadwater, Musselshell, Hill, Sheridan, Judith Basin, McCone, Big Horn, Lincoln, Rosebud, Mineral, Beaverhead, Powder River, Garfield, Carbon, Cascade, Meagher, Blaine, Yellowstone, Liberty, Carter, Custer, Prairie, Dawson, Toole, Ravalli, Treasure, Wheatland, Lake, Jefferson and Sweet Grass. Provided that one (1) elk of either sex may be killed in that part of Granite county lying south and west of the Deer Lodge river from and including November 12th to and including November 15th of the same year.

All of Lewis and Clark county, except that portion lying and being within the following described boundaries: Beginning at the point where the Big Blackfoot river intersects the county line between Lewis and Clark and Powell counties, running thence up the north bank of the Blackfoot river to the mouth of Cadotte creek, thence up Cadotte creek to the top of the Continental divide, thence northerly along the Continental divide to Scapegoat mountain where the headwaters of the north fork of the Blackfoot begin, thence down the north fork of the Blackfoot river to its intersection with the county line between Lewis and Clark and Powell counties, thence along said county line to the point of beginning. In said excepted portion of Lewis and Clark county the open season on elk shall begin November first (1st) and end November fifteenth (15th), both dates inclusive, of each year.

Also all of Missoula and Powell counties, except the drainage area of the Clearwater river and its tributaries and that portion of said counties north of the Big Blackfoot river and east of the drainage area of the Clearwater river and except that portion of Missoula county within the drainage area of Swan river and its tributaries and except that portion of Missoula and Powell counties within the drainage area of the south fork of Flathead river and its tributaries.

All of Gallatin county shall be open to elk hunting except that portion lying north of the township line between townships three (3) and four (4) north.

Provided further, that nothing herein shall be construed to authorize the hunting of game of any kind within the Spotted Bear game preserve, Sun River game preserve, or the Gallatin game preserve, or any other game preserve or refuge now established, or which may be hereafter established, by the state legislature or by orders of the fish and game commission.

Provided, further, that elk may be killed as provided herein, in the county of Park from and including October fifteenth (15th) to and including the twentieth (20th) day of December of any year, except that the state fish and game warden shall, in his discretion, have power to shorten such season and declare said Park county closed to the hunting or killing of elk at any time during the open season in Park county, upon giving no less than five (5) days' notice thereof by publishing such notice in at least one (1) newspaper of general circulation published in said Park county, which said publication shall be at least five (5) days prior to the time fixed by such warden for the closing of such season. And provided further, that it shall be unlawful and a misdemeanor, punishable as in the section provided, for any person to shoot or kill or attempt to kill any elk in Park county between the hours of five (5) p. m. of any day and eight (8) a. m. of the following day, Mountain time. Any person violating any of the provisions of this section or any of the orders of the fish and game warden relating hereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the county jail for not less than thirty (30) days or not more than six (6) months or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931.

taking of elk in Teton, Lewis and Clark, and Park counties.

References

Rosenfeld v. Jakways, et al., 67 M 558, 563, 216 P 776.

NOTE.—See sections 3696.1-3696.6, relating to open season for the killing and

3696.1. Open season for elk in Teton county—authority of game warden to shorten. That the open season for elk in Teton county, Montana, not included within a game preserve, and all that portion of Lewis and Clark county, Montana, lying north of the north fork of the Dearborn river, and not included within the game preserve, shall begin October 15, and end December 1, both dates inclusive, of each year; provided, however, that the Montana state fish and game warden shall in his discretion have power to shorten such season in said territory and declare said territory closed to the hunting or killing of elk at any time during the open season therein upon giving no less than five (5) days' notice thereof.

History: En. Sec. 1, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931.

3696.2. Taking more than one elk during open season, hunting during closed season, wasting meat declared unlawful. During the open season for elk in the territory described and set forth in section 3696.1, it shall be unlawful and a misdemeanor punishable as hereinafter provided, for any person to shoot, kill, take or cause to be shot, killed, taken, more than one elk, or for any person during the closed season for elk to pursue, hunt, shoot, kill, take, capture, or cause to be pursued, hunted, shot, killed, taken or captured, or attempt to shoot, kill, or take any elk within said territory or for any person responsible for the death of any elk to wilfully waste any portion or portions of said elk which are suitable for food.

History: En. Sec. 2, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931.

3696.3. Penalty for violations. Any person violating any of the provisions of this act or any of the orders, rules, or regulations of the Montana state fish and game commission relating hereto, or made pursuant to the authority given it by this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 32, L. 1929; amd. Sec. 1, Ch. 152, L. 1931.

3696.4. Open season for elk in Park county—authority of fish and game commission to shorten. That the open season for elk in Park county, Montana, shall begin October 15th and end March 1st, both dates inclusive; provided, however, that the Montana state fish and game commission shall, in its discretion have power to shorten such season in said territory and declare said territory closed to the hunting or killing of elk at any time during the open season therein upon giving no less than five days' notice thereof, by publishing such notice in at least one newspaper of general circulation, circulated in said county, which said publication shall be at least five days prior to the time fixed by such commission for the closing of such season.

History: En. Sec. 1, Ch. 1, L. 1935.

3696.5. Taking more than one elk during open season, hunting during closed season, wasting meat declared unlawful. During the open season for elk in the territory described and set forth in section 3696.4, it shall be unlawful and a misdemeanor punishable as hereinafter provided, for any person to shoot, kill, take, or cause to be shot, killed, or taken more than one elk or for any person during the closed season for elk to pursue, hunt, shoot, kill, take, capture, or cause to be pursued, hunted, shot, killed, taken or captured, or attempt to shoot, kill, or take any elk within said territory, or for any person responsible for the death of any elk to wilfully waste any portion or portions of said elk which are suitable for food.

History: En. Sec. 2, Ch. 1, L. 1935.

3696.6. Penalty for violations. Any person violating any of the provisions of this act or any of the orders, rules, or regulations, of the Montana state fish and game commission, relating hereto, or made pursuant to the authority given it by this act, or other law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 1, L. 1935.

3697. Open season for deer—waste of meat unlawful. That open season for deer shall begin October fifteenth and shall end November fifteenth, both dates inclusive, of each year. The closed season for deer shall begin November sixteenth of each year and end October fourteenth of the following year, both dates inclusive; provided, however, that in all of that portion of Ravalli county drained by the west fork of the Bitter Root river, and in all of that portion of Ravalli county lying west of the Bitter Root river and north of the confluence of the east and west forks of said Bitter Root river, the open season for deer shall begin with the twentieth day of September and end with the twentieth day of October, both dates inclusive, of each year; and provided, further, however, that it shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to shoot, hunt, kill, take or capture, or cause to be shot, killed, taken or captured, any deer, at any time within the counties of Yellowstone, Daniels, Sheridan, Rosebud, Musselshell, Powder River, Carter, McCone, Carbon, Phillips, Garfield, Petroleum, Treasure, Liberty, Toole, Blaine, Teton, Valley, and also all of Glacier and Pondera counties lying within the Lewis and Clark national forest; and also all of that portion of Gallatin county lying and being north of the south line of township four (4), north, M. P. M., and that part of Big Horn county lying east of 107th meridian.

During the closed season for deer it shall be unlawful for any person to take, hunt, shoot, kill or capture, or cause to be taken, hunted, shot, killed or captured, any deer; during the open season for deer it shall be unlawful for any person to shoot or kill, or cause to be shot or killed, any deer other than one (1) male deer, with horns not less than four (4) inches in length above the top of the skull. Provided, however, that it

shall not be unlawful to take one deer of either sex in Mineral, Glacier, Lake, Sanders, Missoula, Granite and Ravalli counties. It shall be lawful to hunt, shoot, or kill one (1) buck deer each year between the dates of November 1 and 3, both dates inclusive, in the following counties: Roosevelt, Richland, Dawson, Prairie, Wibaux, Fallon, Custer and Carter. It shall also be unlawful and a misdemeanor for any person responsible for the death of any deer, to wilfully waste any portion or portions of said deer suitable for food.

History: En. Sec. 16, Ch. 238, L. 1921; re-en. Sec. 3697, R. C. M. 1921; amd. Sec. 8, Ch. 77, L. 1923; amd. Sec. 17, Ch. 192, L. 1925; amd. Sec. 13a, Ch. 59, L. 1927; amd. Sec. 1, Ch. 128, L. 1929; amd. Sec. 2, Ch. 152, L. 1931; amd. Sec. 1, Ch. 123, L. 1933.

3697.1. Taking deer within boundaries of cities or towns unlawful—penalty. It shall be unlawful to shoot, kill, take, or cause to be shot, killed, taken or captured, or to attempt to shoot, kill, take or capture, any deer within the boundaries of any incorporated or unincorporated city or town of this state.

Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not less than ten (10) days nor more than one hundred and eighty (180) days, or by both such fine and imprisonment, and in addition thereto shall forfeit his fish and game license for a period of one (1) year.

History: En. Sec. 2, Ch. 123, L. 1933.

3697.2. Open season in Park county extended. The open season for hunting and killing elk in Park county, is hereby extended from December twentieth to January tenth, both dates inclusive, of each year.

History: En. Sec. 2-A, Ch. 123, L. 1933.

3698. Destroying evidence of sex constitutes misdemeanor. Any person killing any deer within this state who shall destroy such evidence of the sex of the deer so killed, as to make the determination of the sex thereof uncertain, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as in this act hereinafter provided.

History: En. Sec. 16a, Ch. 238, L. 1921; amd. Sec. 3698, R. C. M. 1921; amd. Sec. 18, Ch. 192, L. 1925.

NOTE.—Punishment for violation of this section provided in section 3706.

3699. Closed season for Rocky Mountain sheep and goats. The entire state of Montana is hereby closed to the shooting, killing, taking, or capturing of any Rocky Mountain sheep or goats; provided, however, that the state fish and game commission shall have the jurisdiction, power, and authority to open for limited periods of time any county in the state or any portion thereof to the shooting, killing, taking, or capturing of any Rocky Mountain sheep or goats, and to establish bag limits. During the closed season for said Rocky Mountain sheep or goats herein named, which said closed season shall be all of that season or period of the year and not declared and ordered open by said commission, it shall be unlawful, and a misdemeanor for anyone to shoot, kill, take, or capture, or cause to be shot, killed, taken, or captured any of the Rocky Mountain sheep or goats of

this state, and any one violating any of the provisions of this section or the orders, rules, or regulations of the commission relating hereto shall be guilty of a misdemeanor and upon conviction thereof shall be fined by a fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00), or not less than ten (10) days imprisonment in the county jail nor more than ninety (90) days imprisonment in the county jail, or by both such fine and imprisonment.

History: En. Sec. 17, Ch. 238, L. 1921;
re-en. Sec. 3699, R. C. M. 1921; amd. Sec.
9, Ch. 77, L. 1923; amd. Sec. 19, Ch. 192,
L. 1925.

References
Rosenfeld v. Jakways, et al., 67 M 558,
563, 216 P 776.

3700. Penalty for violating closed season on certain game birds—power of commission to open season. Any person who, at any time within this state, hunts, shoots, kills, captures, or causes to be shot, killed, or captured, or attempts to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called Ringneck pheasants, Hungarian partridge, ptarmigan or wild turkey, or has in his possession any of such birds or any part of any such birds, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment, provided that the commission shall have the jurisdiction, power, and authority to open for limited periods of time, any county in the state or any portion thereof, to the hunting, shooting, killing, taking, or capturing of any of the birds herein mentioned, when in its opinion, conditions will justify the same, and to declare the number and sex of birds to be taken, killed, or possessed in any one day of said open season or for the entire open season so created by said commission.

History: En. Sec. 18, Ch. 238, L. 1921;
re-en. Sec. 3700, R. C. M. 1921; amd. Sec.
10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192,
L. 1925; amd. Sec. 14, Ch. 59, L. 1927.

References
Rosenfeld v. Jakways, et al., 67 M 558,
563, 216 P 776.

3701. Open and closed seasons for grouse. The open season for sharp tailed grouse, blue grouse, fool hen, ruffed grouse commonly called pheasant or partridge, prairie chicken, sage hen or sage grouse, shall begin on the sixteenth (16th) day of September and end on the twenty-fifth (25th) day of September of the same year, both dates inclusive. The closed season for the game birds named herein shall begin on the twenty-sixth (26th) day of September of each year and end on the fifteenth (15th) day of September of the following year, both dates inclusive. During the open season for the game birds named herein it shall be unlawful and a misdemeanor, punishable as hereinafter provided, for any person in any portion of the state of Montana to shoot, kill or capture, or take, or cause to be shot, killed, or captured, or taken, more than five (5) sharp tailed grouse, blue grouse, fool hen, ruffed grouse commonly called pheasant or partridge, prairie chicken, sage hen or sage grouse, in the aggregate of all kinds in any one day; it shall be unlawful and a misdemeanor, punishable as hereinafter provided, for any person to have in his possession more than five (5) of any such birds in the aggregate of all kinds at any one time. During the closed

season for the game birds herein named it shall be unlawful and a misdemeanor, punishable as hereinafter provided, to shoot, kill or capture, take or cause to be shot, killed or captured, or taken, any of the game birds named herein, provided, however, that the commission shall have the power to advance the date of the open season on sage grouse in any county of this state when said commission feels convinced that such change is necessary and meets with the approval of the sportsmen and property owners in such community, provided the notice of opening of a particular county or part thereof shall be advertised in a newspaper of that county at least ten (10) days prior to such opening date.

History: En. Sec. 19, Ch. 238, L. 1921; re-en. Sec. 3701, R. C. M. 1921; amd. Sec. 11, Ch. 77, L. 1923; amd. Sec. 21, Ch. 192, L. 1925; amd. Sec. 15, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3702. Repealed—Chapter 192, laws of 1925.

3703. Closed season and bag limits on migratory game birds. Any person who, during the period beginning the first (1st) day of January of any year and the fifteenth (15th) day of September of the same year, both dates inclusive, hunts, kills or captures, or causes to be shot, killed or captured, or attempts to shoot, kill or capture any wild ducks, wild geese, brant, Wilson snipe or jacksnipe, greater or lesser yellowlegs, coot or gallinule, or who during the period beginning the first (1st) day of December of any year and the fifteenth (15th) day of September of the following year, both dates inclusive, hunts, kills, or captures, or attempts to shoot, kill or capture any sora or other rail, except coot and gallinule, or who in any one day during the open season shoots, kills or captures, or causes to be shot, killed or captured more than twenty-five (25) wild ducks (other than wood duck and eider duck) in the aggregate of all kinds, eight (8) wild geese in the aggregate of all kinds, eight (8) brant, twenty (20) Wilson or jacksnipes, twenty-five (25) rails and gallinules, in the aggregate of all kinds, but not more than fifteen (15) of any one species, twenty-five (25) sora, twenty-five (25) coot, fifteen (15) greater and lesser yellowlegs in the aggregate of both kinds, or who hunts, shoots at, captures, kills, or attempts to capture or kill any migratory birds on any day except from half an hour before sunrise to sunset during the open season prescribed therefor, or who at any time of year hunts, shoots, kills or captures, or causes to be shot, killed or captured any little brown sandbill and whooping cranes, swan, woodcock, avocet, curlew, dowitcher, godwit, knot, plover, kildeer, sandpiper, willet, or other shore bird except greater and lesser yellowlegs, Wilson snipe or jacksnipe, or who shall possess any wild duck, wild goose, brant, Wilson or jacksnipe, greater or lesser yellowlegs, coots or gallinule, during the period beginning the eleventh (11th) day of January of any year and the fifteenth (15th) day of September of the same year, both dates inclusive, or who shall possess any sora or other rail, (except coot and gallinule), during the period beginning the eleventh (11th) day of December of any year and the fifteenth (15th) day of September of the following year, both dates inclusive, shall be guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided.

The fish and game commission is hereby authorized and empowered to make such changes in the provisions of this section as shall be necessary to make said provisions conform at all times to the regulations of the United States department of agriculture pertaining to all and any of the migratory birds named herein.

History: En. Sec. 20, Ch. 238, L. 1921; re-en. Sec. 3703, R. C. M. 1921; amd. Sec. 13, Ch. 77, L. 1923; amd. Sec. 16, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3704. Closed and open seasons for fur-bearing animals. Any person who between the fifteenth (15th) day of April of any year and the first (1st) day of December of the same year, shoots, traps, kills or captures, or causes to be shot, trapped, killed or captured, or attempts to shoot, trap, kill or capture any marten or sable, otter, fox, mink, muskrat, raccoon or fisher, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as in this act hereinafter provided. Provided, however, that when it is shown that muskrats are doing severe injury upon, or are a menace to the structures, canal banks or other works of an irrigation project or district, any resident landowner on such project or district may kill or trap or cause to be killed or trapped any muskrat upon or in menacing proximity to the structures, canal banks or other works of such project or district during the closed season on muskrats, after having secured from the state fish and game warden a permit so to do, except that from June first (1st) to August thirty-first (31st), both dates inclusive, of each year, no such permit shall be required. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time.

It shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to shoot, trap, kill or capture, or cause to be shot, trapped, killed or captured, or to attempt to shoot, trap, kill or capture any otter, raccoon, marten or sable, until such time as the commission shall provide an open season on marten or sable, otter, or raccoon, and any person violating any of the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in this act hereinafter provided.

It shall be unlawful and punishable as in this act hereinafter provided, for any person at any time to wilfully destroy, open or leave open, or partially destroy, the house of any muskrat or beaver.

The open season on fur-bearing animals shall begin on December first (1st) of each year and end on April fifteenth (15th) of the following year, both dates inclusive.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R. C. M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3704.1. Trappers' license for trapping on owners' land—fee—privileges. A license to trap may be procured by the owner or tenant, or members of the immediate family thereof, of real estate for the purpose of trapping on his own land or land leased by him, upon a payment of a license fee of one dollar (\$1.00) and on making an application such as required for other trapping licenses by the laws of this state. No other license shall be re-

quired of such applicant. Such license shall authorize the holder thereof to trap any fur bearing animals except beaver on lands owned or leased by him at such times and in such manner as may be lawful so to do under the laws of this state and the regulations of the fish and game commission and at such places as may be designated in said license.

History: En. Sec. 1, Ch. 128, L. 1933.

3705. Costs. In any case where costs have been incurred by a county in a prosecution for the violations of any of the provisions of this act, or of any other laws of the state of Montana, with reference to fish and game, a cost bill, including the cost of board of a prisoner, shall be prepared and presented to the state board of examiners, and, if approved by it, the state treasurer shall thereupon pay the same out of the fish and game fund of the state, to the county treasurer of the county incurring such costs and expenses.

History: En. Sec. 22, Ch. 238, L. 1921; re-en. Sec. 3705, R. C. M. 1921.

3706. Penalties. Any person found guilty of a violation of any of the terms of this act, or of any other violations of the state fish and game laws of the state of Montana, or of the rules, regulations, or orders of the commission, if the same is defined as a misdemeanor under the terms hereof, shall, unless the punishment is otherwise defined and set forth, be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than ten (10) days, nor more than one hundred eighty (180) days, or by both such fine and imprisonment, and in addition thereto, shall, in the discretion of the court, forfeit his license to hunt, fish or trap within this state for a period of one (1) year from date of conviction.

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R. C. M. 1921; amd. Sec. 23, Ch. 192, L. 1925.

3707. Compensation of persons issuing licenses. Any person hereby authorized to issue licenses of any kind, except duly appointed game and deputy game wardens, shall receive as compensation for issuing such license a sum of ten cents (\$0.10) for each license so issued. Said compensation to be by such person retained out of each license fee as reported in the manner herein provided for reports of persons authorized to issue licenses.

History: En. Sec. 24, Ch. 238, L. 1921; re-en. Sec. 3707, R. C. M. 1921; amd. Sec. 15, Ch. 77, L. 1923.

3708. Alien gun license. There is hereby created a gun license for aliens. No person not a bona fide citizen of the United States shall own or have in his possession, in the state of Montana, any gun, pistol or other firearm, without first having obtained from the game and fish warden a license therefor, which said license shall cost the owner of said firearm the sum of twenty-five dollars, and shall expire one year from date of issuance thereof; provided, however, that this section shall not apply to one who has obtained the twenty-five dollar hunting license required by the laws of Montana; provided, further, that the provisions of this section shall not apply to any alien who is a bona fide resident of the state of Montana, and the owner of not less than one hundred and sixty acres of land therein, nor

shall it apply to any settler on the public lands of the state of Montana who shall have begun to acquire land under the laws of the United States by filing thereon, nor shall it apply to persons engaged in tending or herding sheep or other animals held in herd.

History: En. Sec. 1, Ch. 38, L. 1913; re-en. Sec. 3708, R. C. M. 1921.

References

State v. Hodge, 84 M 24, 30, 273 P 1049.

3709. Failure to procure alien gun license a misdemeanor. Any alien of the United States who shall have in his possession or under his control, any gun, pistol or other firearm, without having taken out and being at the time in possession of a license as provided in the preceding section, shall be guilty of a misdemeanor, and be punished by a fine of not less than twenty-five dollars.

History: En. Sec. 2, Ch. 38, L. 1913; re-en. Sec. 3709, R. C. M. 1921.

3710. Confiscation of firearms illegally in possession of alien. It shall be the duty of the game and fish warden and his duly authorized deputies, and of all peace officers in the state of Montana, to search for and take into their possession any gun, pistol, or other firearm found in the possession of any alien not entitled to hold or possess same, and to sell the same, and all of the provisions of section 1959 of the revised codes of Montana shall apply to the enforcement of this act.

History: En. Sec. 3, Ch. 38, L. 1913; re-en. Sec. 3710, R. C. M. 1921.

NOTE.—The section referred to above was repealed by chapter 193, laws of 1921.

3711. Disposition of fines. All fines and other moneys collected under the provisions of this act, when arrest has been made by the game and fish warden and his deputies, shall be paid into the fund known as the "fish and game fund," and all fines and other moneys collected under the provisions of this act, where the arrest has been made by peace officers, shall be paid into the school fund of the county where said action is tried or arrest made.

History: En. Sec. 4, Ch. 38, L. 1913; re-en. Sec. 3711, R. C. M. 1921.

3712. Federal government may conduct fish-hatching operations in state. The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents, be and they are hereby authorized, empowered and granted the right to conduct fish-hatching and all operations connected therewith, in any manner and at any time that may by them, or any of them, be considered necessary and proper, at any United States fish cultural station that may hereafter be established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913; re-en. Sec. 3712, R. C. M. 1921.

3713. Sale of fish or spawn prohibited—exceptions. Every person who in any way catches any of the fish which in this act are classified as "game fish," or who shall remove or cause to be removed the eggs or spawn of any such fish for speculative purposes, for market, or for sale, or who shall sell or offer for sale any of the game fish of this state as in this act defined, or the eggs or spawn therefrom, shall be deemed guilty of a misdemeanor and shall be punished accordingly; provided, however, that this section

shall not apply to fish caught in private ponds by the owner thereof, nor to the taking of fish by the state authorities for the purpose of obtaining the eggs for propagation in state fish hatcheries, or by any person who receives a permit from the state fish commission to take eggs for said purposes.

History: En. Sec. 21, Ch. 173, L. 1917; re-en. Sec. 3713, R. C. M. 1921.

3714. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fish traps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 3706, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, traps, seines, or nets may be used for the taking of non-game fish and Dolly Varden trout, and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Ch. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927.

Complaint

Complaint charging offense of unlawfully taking fish from stream held sufficient. State v. Russell, 52 M 583, 584, 160 P 655.

3715. Record of seining licenses—refusal of license. It shall be the duty of the state game warden to keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and when revoked (should same be so revoked), and to pay all fees received for such licenses into the state treasury to the credit of the fish and game fund. Should an application be made for a license by any person who has theretofore had a license revoked for cause, it shall be the duty of the state game warden to refuse the same, and no license shall be issued to any person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R. C. M. 1921.

3716. Unlawful to possess net or seine—exceptions. It is unlawful for any person or persons to have in their possession or under their control any seine, net or other similar device for capturing fish. A seine or net

found in any vehicle, at the camp, or on the premises of any person shall be prima facie evidence that the said seine, net or similar device belongs to the person or persons occupying said camp or premises; provided, that nothing herein contained shall apply to the owners of private fish ponds, as defined under the statute, nor to a person or persons having unexpired seine or net license, as provided for in the statutes of Montana; provided, further, that nothing herein contained shall apply to the use, by any person, of a landing net used in connection or in addition to pole, line and hooks, in fishing for game fish; and provided, further, that nothing herein contained shall apply to the possession of traps, seines or nets where found in the vicinity of any waters which the fish and game commission have designated within the state, where traps, seines or nets may be used for the taking of non-game fish and Dolly Varden trout, as provided for in the statutes of Montana.

History: En. Sec. 25, Ch. 173, L. 1917; re-en. Sec. 3716, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1933.

3717. Use of explosives or poisons in taking fish unlawful—penalty. If any person or persons shall use any carbide, lime, giant powder, dynamite, or other explosive compounds, or any corrosive or narcotic poison or other deleterious substance, or have any of same in his possession within one hundred (100) feet of any stream where fish are found, for the purpose of catching, stunning, or killing fish, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term of not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment.

History: En. Sec. 26, Ch. 173, L. 1917; re-en. Sec. 3717, R. C. M. 1921; amd. Sec. 24, Ch. 192, L. 1925; amd. Sec. 1, Ch. 82, L. 1933.

3717.1. Definition and use of lakes as navigable waters. All lakes, wholly or partly within this state, which have been meandered and returned as navigable by the surveyors employed by the government of the United States, and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

History: En. Sec. 1, Ch. 95, L. 1933.

3717.2. Navigable streams. All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States, and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Sec. 2, Ch. 95, L. 1933.

3717.3. Navigable and public waters open to fishing. Navigable rivers, sloughs or streams between the lines of ordinary high water thereof, of the state of Montana, and all rivers, sloughs and streams flowing through any public lands of the state, shall hereafter be public waters for the purpose of angling, and any rights of title to such streams, or the land between the

high water flowlines or within the meander lines of navigable streams, shall be subject to the right of any person owning an angler's license of this state who desires to angle therein or along their banks to go upon the same for such purpose.

History: En. Sec. 3, Ch. 95, L. 1933.

3718. Dumping refuse from sawmill into streams. No person or corporation operating a sawmill on or near any stream, pond, lake, or river shall hereafter dump, drop, cart, or deposit, or cause to be dumped, dropped, carted, or deposited, sawdust, bark, shavings, oil, ashes, cinders, or debris in or near any such stream, pond, lake, or river, in such manner or place as will likely result or cause the same to be carried into the waters of any such stream, pond, lake, or river; and any person so doing shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

History: En. Sec. 28, Ch. 173, L. 1917; re-en. Sec. 3718, R. C. M. 1921.

3719. Killing of moose, bison, buffalo, caribou, or antelope a misdemeanor. Any person who wilfully shoots or kills or captures, or causes to be shot or killed or captured, any moose, bison, buffalo, caribou, or antelope (and it is hereby made unlawful to kill any of said animals except as hereinafter stated), is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 34, Ch. 173, L. 1917; re-en. Sec. 3719, R. C. M. 1921.

References

Rosenfeld v. Jakways et al., 67 M 558, 563, 216 P 776.

3720-3721. Repealed—Chapter 192, laws of 1925.

3721.1. Killing game for head, hide, antlers, tusks or teeth unlawful. Any person who at any time kills, captures or destroys any game animal of this state and detaches or removes from the carcass only the head, hide, antlers, tusks or teeth, or any, or all of the aforesaid parts, is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 115, L. 1931.

3721.2. Failure to dress game as prima facie evidence of violation. The failure of any person or persons to properly dress and care for any game animal killed by such person or persons within twenty-four hours and take or transport to the camp of such person or persons such carcass within a reasonable time and there properly take care of the same shall be prima facie evidence of the violation of the provisions of this act.

History: En. Sec. 2, Ch. 115, L. 1931.

3721.3. Penalty. Any person or persons violating the provisions of this act shall be punishable by a fine of not less than \$100.00 or more than \$300.00, or imprisonment in the county jail for a term of not less than thirty days or more than six months, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 115, L. 1931.

3722. Protection of beaver—permit and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation. No person shall take, trap, kill, capture or attempt to take, trap, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell,

ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors, whether taken within or coming from without the state, except as hereinafter permitted.

Provided that upon payment of a fee of ten dollars (\$10.00), the state fish and game warden may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to take or destroy beaver on his own or leased premises only, and provided that the warden shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be taken or destroyed under such permit. All applications for beaver permits shall be filed with the state fish and game warden, between the dates of May first (1st) and November thirtieth (30th) of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game warden shall in person or by deputy examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game warden shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the deputy state fish and game warden residing in his county, or in event of such deputy being absent or unable to act, then to the nearest deputy from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50c) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game warden, and upon the receipt thereof the state fish and game warden shall forward to such deputy numbered metal tags sufficient in number for one to be attached to each skin covered by the affidavit; upon the receipt of such tags, the deputy shall so attach them to the skins and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his services.

A record of tags so issued shall be kept in the office of the state fish and game warden.

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game warden and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty (50c) cents, and it shall not be necessary for such skins to be retagged with a Montana tag, nor any other fees paid therefor.

The state fish and game warden shall keep a record of all skins so reported.

Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skin, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins, taken within the state under permit, and those coming from without the state, tagged as herein provided, may be possessed, bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game warden, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of fifty (50c) cents for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and the consignee, the number and kind of skins contained therein, and the number of the shipping permit. The taking and sale of live beaver under permit issued by virtue of the provisions of this section shall be regulated by the fish and game commission, and the license fee to be charged for sale of live beaver shall be three (\$3.00) dollars for each beaver sold, provided that live beaver shall be sold only to those who hold a license for the purpose of the propagation of fur-bearing animals in this state.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as hereinafter provided. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are hereby declared contraband and shall be seized by the state fish and game warden, deputy or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game warden to the best advantage, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire May first (1st) of each year, and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior to July first (1st) following shall be subject to seizure and sale as herein provided.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, L. 1923; amd. Sec. 19, Ch. 59, L. 1927; amd. Sec. 1, Ch. 167, L. 1935.

NOTE.—Punishment for violation of this section provided in section 3742.1.

Operation and Effect

Under this section prohibiting the kill-

ing of beaver except as therein provided, and section 3725, making possession of certain wild animals or parts thereof prima facie evidence that the possessor killed the same, private ownership of beaver pelts is not a matter of common right, but may be acquired only by compliance with the restrictions, and then such ownership is qualified. *Rosenfeld v. Jakways et al.*, 67 M 558, 563, 216 P 776.

3722.1. Importation of beaver skins tagged in other states—fee to accompany report of skins. Any person who shall receive or bring in from without the state of Montana, any beaver skin or skins regularly tagged by another state, shall report their arrival in the state within three days, to the state fish and game warden, and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner and method of transportation in the state, and the tag numbers on such skins, and the state fish and game warden shall keep a proper record of all skins so reported. And that it shall not be necessary for the same to be re-tagged with a Montana tag, nor any fees paid thereon, except that each such report shall be accompanied with the sum of fifty (.50) cents as the fee for recording by the state fish and game warden.

History: En. Sec. 1, Ch. 99, L. 1931.

3723. Protection of wild birds other than game birds. Any person who at any time shall hunt, capture, kill, possess, purchase, offer or expose for sale, ship, transport or cause to be shipped or transported any wild bird other than a game bird, or any part of the plumage, skin or body of any such bird, irrespective of whether said bird was captured or killed within or without the state, or take or destroy the nest or eggs of any such wild bird, except under a certificate or permit issued by the state fish and game warden, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided; provided, however, that the provisions of this section shall not apply to the hunting, trapping or killing of English sparrows, crows, eagles, hawks, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies and jays and such other birds as the fish and game commission shall designate, or the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R. C. M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3724. Destruction of nests or eggs of birds or wild fowl. Any person who shall wilfully destroy the nests, or carry away the eggs from the nests of any of the birds or wild fowls mentioned in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 42, Ch. 173, L. 1917; re-en. Sec. 3724, R. C. M. 1921.

NOTE.—Repealed in title of, but not in act of, Ch. 77, L. 1923. (Sec. 3723, R. C. M. 1921, as amended, seems to cover this section.)

3725. Possession of unlawfully killed animals and of unlawful fishing implements—prima facie evidence—penalty. The possession of dead bodies, or any part thereof, of any of the game fish, game or non-game birds, game or fur-bearing animals defined by the fish and game laws of the state of Montana, shall be prima facie evidence that such person or persons in whose possession the same are found have killed, caught, or taken the same, and the possession of a fishing rod and line, spear, gig or barbed fork, on the banks or shores of a stream or lake shall be prima facie evidence that the person or persons in whose possession the same are found was using the same to fish.

Any person who shall possess, have, or hold, or purchase, or keep in storage, or possess for any other purpose, any game fish, game bird, non-game bird, game animal, fur-bearing animal, or parts thereof, which shall have been unlawfully killed, captured, or taken, or who shall unlawfully use any fishing rod and line, or fishing lines, spear, gig or barbed fork, shall be guilty of a misdemeanor punishable as hereinafter provided.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R. C. M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931.

NOTE.—Punishment for violation of this section provided in section 3742.1.

References

Rosenfeld v. Jakways et al., 67 M 558, 564, 216 P 776.

3725.1. Use of anchored snare unlawful. It shall be unlawful for any person to use, or attempt to use, any anchored snare trap for the purpose of snaring any animal or bird.

History: En. Sec. 1, Ch. 23, L. 1933.

3725.2. Penalty. Any person who violates the provisions hereof shall be guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 2, Ch. 23, L. 1933.

3726. Sale of confiscated birds and animals. All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer as herein provided, shall be sold, under the direction of the state game warden or his deputies, at a time, place, and manner so as to receive the highest price therefore. Such sales shall be made at public auction to the highest and best bidder, and the game warden or his deputies shall give notice of the time and place of such sale, together with a description of the bird, or birds, fish, animal or animals, or parts or portions of animals to be so sold by one publication, at least, in a newspaper of general circulation published in the county where such sale is noticed to be held, and the date of sale shall not be less than five nor more than thirty days after the last date of such publication; provided, that in cases where the property seized is perishable, the same may be sold by such officers without publishing a notice thereof, upon such public notice, and under such terms and conditions as, in the discretion of the officers, may seem conducive to secure the full value thereof.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R. C. M. 1921.

References

Rosenfeld v. Jakways et al., 67 M 558, 564, 216 P 776.

3727. Certificate of sale. Upon the sale of such property, the officer shall issue a certificate to the party purchasing the same, certifying that the purchaser has the legal right to be in possession of the same, and anyone so acquiring said property from the state shall have the right to deal therewith without further question with respect to violation of the law, anything herein to the contrary notwithstanding.

History: En. Sec. 48, Ch. 173, L. 1917; re-en. Sec. 3727, R. C. M. 1921; amd. Sec. 27, Ch. 192, L. 1925.

References

Rosenfeld v. Jakways et al., 67 M 558, 564, 216 P 776.

3728. Disposition of proceeds of sale. The money obtained upon the sale of such property shall be paid over to the court before whom the

person having the same in possession at the time of seizure is prosecuted, or in which prosecution is pending, and if the person charged with violation of the law is found guilty before said court of violation of the fish and game laws of the state, the money received for the sale of said property shall be paid over to the state treasurer, and be deposited by him to the credit of the fish and game fund; but should it be found that the party from whom the same was taken was not guilty of any violation of the fish and game laws of this state, said money shall be paid to the party from whom said birds, animals, fish, or parts or portions thereof were taken. No officer shall be liable for any damage on account of any search, examination, seizure, or sale as herein provided. Where wild animals, game-birds, or fish are seized as in this act provided, and the person or persons who killed or captured the same cannot be ascertained, then the money so received from the sale of such animals, game-birds, or fish shall be paid direct to the state treasurer. The cost of advertising notice of sale, as herein required, shall be paid from the fish and game fund.

History: En. Sec. 49, Ch. 173, L. 1917; re-en. Sec. 3728, R. C. M. 1921.

3729. Record of confiscated property. It shall be and is hereby made the duty of the state game warden, and of every deputy game warden, to make a full and complete record of all property by them, or either of them, confiscated because of a violation of the game and fish laws of this state, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The state game warden shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this act.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R. C. M. 1921.

3729.1. Power of commission to dispose of elk increased in numbers and damaging property. That whenever elk, imported within the state of Montana, or any portion thereof, have increased in numbers to such an extent that in the judgment of the state fish and game commission their number should be reduced, and special or private property is being actually or materially damaged or destroyed by said elk, and a written complaint of such damage has been filed by the owners or lessees of said property with the state fish and game commission, the said commission shall have the power and authority whenever, in its opinion, conditions warrant it, to take, kill, remove or dispose of such elk, or to permit the same to be taken, killed, removed, or disposed of under such rules, regulations and conditions as it may prescribe and promulgate.

History: En. Sec. 1, Ch. 72, L. 1933.

3729.2. Power of commission to dispose of antelope increased in number and damaging property in Chouteau county. Whenever antelope within the county of Chouteau, state of Montana, have increased in numbers to such an extent that, in the judgment of the state fish and game commission, their number should be reduced, and special or private property is being actually or materially damaged or destroyed, by said antelope in said Chouteau county, and written complaint of such damage has been filed by

the owners or lessees of such property with the state fish and game commission, the said commission shall have the power and authority whenever, in its opinion, conditions warrant it, to take, kill, remove or dispose of such animals or to permit the same to be taken, killed, removed, or disposed of under such rules, regulations, and conditions as it may prescribe and promulgate.

History: En. Sec. 2, Ch. 72, L. 1933.

3729.3. Power of commission to dispose of fish increased in number in Lake county. That whenever the fish within the county of Lake, state of Montana, shall have increased in numbers to such an extent that in the judgment of the state fish and game commission, their numbers should be reduced, the commission shall have the power and authority to take, kill, remove, or dispose of such fish or to permit the same to be taken, killed, removed, or disposed of under such rules, regulations and conditions as it may prescribe and promulgate.

History: En. Sec. 3, Ch. 72, L. 1933.

3729.4. Disposal of revenue. In case any revenue is derived from the taking, killing, removing, or disposing of such fish and animals as above described in this act, the same shall be deposited in the state fish and game commission fund.

History: En. Sec. 4, Ch. 72, L. 1933.

3729.5. Rules and regulations, when effective. Whenever said commission shall have made any order, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force and effect from and after the publication and posting of notice of said orders, rules and regulations, as required by the fish and game laws of said state.

History: En. Sec. 5, Ch. 72, L. 1933.

3729.6. Penalty for violations. Any person who shall violate any of the provisions of this act, or any of the orders, rules and regulations of the fish and game commission, made pursuant to the authority given it under this act, he shall be deemed guilty of a misdemeanor and upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one hundred and eighty (180) days, or by both such fine and imprisonment, and in addition thereto, shall, in the discretion of the court, forfeit his license to hunt, fish or trap within this state for a period of one year from the date of his conviction.

History: En. Sec. 6, Ch. 72, L. 1933.

3730. Removal of animals or parts of animals from state unlawful, when. It is hereby declared to be unlawful and a misdemeanor, punishable as hereinafter provided, for any person or persons to ship or take out of the state any of the game or non-game birds, fish, game animals, fur-bearing animals, or the skins of fur-bearing animals, or any parts thereof, which are mentioned in this act whether taken within or coming from without the state, except the same be done in the manner provided for by sections 3730, 3731, and 3732.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R. C. M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3731. Permit to resident to ship animals or parts of animals from state.

Any resident of this state who desires to ship out of the state any game animals, game or non-game birds, fish, fur-bearing animals, or the skins of fur-bearing animals, or parts thereof, legally taken or killed in the state during the open season therefor, or coming from without the state, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and consignor, destination and number and kind of game or non-game birds, game animals, fish, fur-bearing animals, or the skins from fur-bearing or parts thereof, that is to be shipped, and said permit shall be presented to the transportation company with consignment.

History: En. Sec. 52, Ch. 173, L. 1917; re-en. Sec. 3731, R. C. M. 1921; amd. Sec. 20, Ch. 77, L. 1923; amd. Sec. 23, Ch. 59, L. 1927.

3732. Permit to non-resident to ship animals or parts of animals from state.

Any non-resident of this state who has procured a proper license to hunt or fish within this state, and who desires to ship out of the state any of the game animals, game birds, fish, or any part thereof, taken or killed by him during the open season for killing the same, the same having been killed lawfully, shall present to the transportation company his license with the consignment of game or fish to be shipped, provided, that no person shall ship in one year more game or fish than it is lawful for one person to kill in a single open season. Provided that any non-resident who desires to ship or take out of the state, any fur-bearing animal, or the skins from fur-bearing animals, or parts thereof, legally acquired, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and the consignor, destination and number and kind of fur-bearing animals, or the skins from fur-bearing animals that are to be shipped and said permit shall be presented to the transportation company with the consignment.

History: En. Sec. 53, Ch. 173, L. 1917; re-en. Sec. 3732, R. C. M. 1921; amd. Sec. 21, Ch. 77, L. 1923; amd. Sec. 24, Ch. 59, L. 1927.

3733. Labeling of packages for shipment from state. All shippers of fish, game or non-game birds, game animals, fur-bearing animals, or the skins of fur-bearing animals or predatory animals, or parts thereof, are hereby required to label all packages offered for shipment by parcel post, common carrier or otherwise, such label to be securely attached to the address of the package and plainly indicate the names and addresses of the consignor and consignee and the complete contents of said package. All persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R. C. M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927.

3734. Violations of provisions relating to shipment—penalty—confiscation. No person or persons, or the agent or employee of any common car-

rier, association, stage, express, railway or transportation company shall transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or non-game birds, fish, fur-bearing animals, or the skins of fur-bearing animals, or parts thereof, except as specifically provided for by this act, and all game or non-game birds, fish, game animals, or fur-bearing animals, or parts thereof had in possession, or which have been shipped or are being transported in violation of any of the provisions of this act, shall be seized, confiscated, and disposed of as provided by law. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and punished as hereinafter provided.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R. C. M. 1921; amd. Sec. 26, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3735. Transporting, selling or offering for sale illegally taken fish—penalty—provision in case of fish caught under license. Any person or persons or the agent of any state, express, or railway company, or association or persons who shall receive, for transportation or carriage, or shall sell or offer for sale any of the game fish that have been taken or killed contrary to the provisions of this act, knowing or having reason to know or believe that such fish were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as in this act provided; provided, however, that any person having in his possession a fishing license for the current year may ship not to exceed twenty (20) pounds and one fish of the varieties in this act designated as game fish, by express, stage, or freight, upon showing said license to any such common carrier or to the agent thereof.

History: En. Sec. 56, Ch. 173, L. 1917; re-en. Sec. 3735, R. C. M. 1921; amd. Sec. 29, Ch. 192, L. 1925.

NOTE.—Punishment for violation of this section provided in section 3706.

3736. Fee for issuing shipping permits—disposal of. The state fish and game warden shall make a charge of fifty cents (\$.50) for each and every shipping permit issued by him for the shipment of game or non-game birds, fish, game, animals, or fur-bearing animals, or parts thereof, out of the state. All money so received shall be turned over by him to the state treasurer at the time and in the manner provided by law, and the state treasurer shall place such money to the credit of the state fish and game fund.

History: En. Sec. 57, Ch. 173, L. 1917; re-en. Sec. 3736, R. C. M. 1921; amd. Sec. 27, Ch. 59, L. 1927.

3737. Lawful for merchants, hotels or restaurants to possess and sell game not killed within state. It shall be lawful for any merchant, hotel, or restaurant keeper to have in his possession, and to offer for sale, and to sell game and game-birds; provided, that said game and game-birds are not and have not been killed within the state of Montana.

History: En. Sec. 58, Ch. 173, L. 1917; re-en. Sec. 3737, R. C. M. 1921.

3738. Evidence of lawful possession of game must be produced, when. It shall be the duty of every merchant, hotel, and restaurant keeper, having in his possession and offering for sale any game or game-birds, to

produce upon demand, for the inspection of any game warden or deputy game warden or sheriff, the receipt or record and shipping and transportation receipts required hereby to be kept by him, and a failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game-birds, shall constitute prima facie evidence of the violation of this act.

History: En. Sec. 59, Ch. 173, L. 1917; re-en. Sec. 3738, R. C. M. 1921.

3739. Record to be kept by persons having in possession or offering game for sale. It shall be the duty of every person having in his possession and offering for sale any game or game-birds to keep a record showing the amount and kind of game and game-birds received by him, together with shipping and transportation receipts showing the true time and place of shipment of said game and game-birds, and the name of the person shipping same; provided, however, that any merchant in Montana selling game or game-birds to any hotel or restaurant keeper or other person shall, in addition to the record and receipts heretofore required to be kept by him, keep a record of the date of sale, kind, and amount of game or game-birds, and the name of the purchaser; and provided, further, that in the case of hotel and restaurant keepers, or other persons buying game or game-birds from a merchant within the state of Montana, a receipt from the said merchant showing the date, amount, and kind of game or game-birds purchased shall be sufficient evidence of compliance with the provisions of this act by such hotel or restaurant keeper or other person.

History: En. Sec. 60, Ch. 173, L. 1917; re-en. Sec. 3739, R. C. M. 1921.

3740. Non-compliance with law a misdemeanor. Any person who shall have in his possession and offer for sale or sell any game or game-birds, without having complied with the provisions of this act relating to the keeping of a record and shipping and transportation receipts, shall be guilty of a misdemeanor and punished accordingly.

History: En. Sec. 61, Ch. 173, L. 1917; re-en. Sec. 3740, R. C. M. 1921.

3741. Definitions. In the construction of this act the words "game" and "game birds" or parts of the same, shall be construed to mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana; and the words "merchant," "hotel and restaurant keeper," shall include each and every manager, servant, agent, and employer of such person.

History: En. Sec. 62, Ch. 173, L. 1917; re-en. Sec. 3741, R. C. M. 1921; amd. Sec. 30, Ch. 192, L. 1925.

3742. Unlawful to transport, possess or dispose of animals or parts of animals except under permit—exceptions—penalty. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game fish, wild bird, game or fur-bearing animal or part thereof, protected by the laws of this state, or coming from without the state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by this act. The provisions of this section shall not apply to the plumage of wild

waterfowl lawfully killed when purchased or sold for other than millinery purposes, or to birds or animals collected or possessed under a permit issued by the proper state fish and game warden for scientific or propagating purposes, nor shall the provisions of this section be construed to prohibit the purchase, sale or offering for sale, shipping, transporting, or possession for sale, any head, skin, or scalp, mounted or unmounted, or any full-sized mount of any game animal lawfully killed, provided the seller, before selling any such specimen shall first obtain from the state fish and game warden a permit authorizing him to sell it, nor to the sale of fur-bearing animals, or the skins of fur-bearing animals, except untagged beaver skins, nor to the export of fur-bearing animals or the skins of fur-bearing animals under proper permit of the state fish and game warden. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as hereinafter provided.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R. C. M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927.

NOTE.—Punishment for violation of this section provided in section 3742.1.

3742.1. Penalties. Any person found guilty of a violation of the terms or provisions of this act, shall be punished in the manner provided by section 3706.

History: En. Sec. 29, Ch. 59, L. 1927.

3743. Meaning of word "sale" in game and fish laws. The word "sale," as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

1. A contract by which, for a pecuniary consideration called a price, one transfers an interest in either game or fish.
2. A contract by which, for an article or thing of value, one transfers, barters, or exchanges an interest either in game or fish.

History: En. Sec. 64, Ch. 173, L. 1917; re-en. Sec. 3743, R. C. M. 1921.

3744. Repealed—Chapter 59, laws of 1927.

3744.1. Bag limit prizes for game or fish taken unlawful—exception. That it shall be unlawful for any person, firm, corporation, association or club to offer or give any prize, gift or anything of value in connection with, or as a bag limit prize for, the taking, capturing, killing or in any manner acquiring any game, fish, fowl, fur-bearing animals, or any fish, bird or animal now, or that shall be hereafter, protected in any way by the fish and game laws of the state of Montana.

This act shall not be construed to prohibit the award of prizes for any one game bird, animal, fish or fur-bearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935.

3744.2. Penalty for violation. Any person, firm, corporation, association, or club violating any of the provisions of section 3744.1, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined

not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) for each such offense.

History: En. Sec. 2, Ch. 82, L. 1935.

3745. Guide's license—fee—qualifications—contents. No person shall engage in the business of guiding, as the term is commonly understood, without first having procured from the state fish and game warden a guide's license. Any competent person, who is a bona fide citizen of the state of Montana shall upon the presentation of an affidavit, stating that the applicant is of good moral character and responsible, and signed by three taxpayers of the county in which the applicant lives; and by the applicant making the payment of ten dollars (\$10.00) to the state game warden, receive from said state game warden a guide's license, which shall be good for one year only; provided that upon the payment of ten dollars (\$10.00) annually said license may be renewed. Such license shall state the name, age, and place of residence of the holder, and shall further recite that the holder of such license is a person of good moral character.

History: En. Sec. 66, Ch. 173, L. 1917; re-en. Sec. 3745, R. C. M. 1921; amd. Sec. 17½, Ch. 77, L. 1923.

3746. Penalty for acting as guide without license. Any person violating any of the provisions of this act, who shall act as a guide without the necessary qualifications and without the proper compliance with the terms hereof, shall be guilty of a misdemeanor, and be punished accordingly; and in all cases where a conviction is had the license theretofore issued shall be revoked.

History: En. Sec. 67, Ch. 173, L. 1917; re-en. Sec. 3746, R. C. M. 1921.

3747. Who deemed a guide. Any person who shall, for pay, aid or assist any person or party in locating, pursuing, hunting, or killing any of the game-birds or animals mentioned in this act, shall be deemed a guide within the meaning of this section.

History: En. Sec. 68, Ch. 173, L. 1917; re-en. Sec. 3747, R. C. M. 1921.

3748. Same. Any person who shall engage in the business of packing for hunting parties, as the term is commonly understood, or who shall, for pay, accompany such parties as guide, packer, or cook, shall be considered a guide and shall come within the requirements of this act; provided, however, that it shall be necessary only for one of the persons above named with each and every hunting party to have fulfilled the requirements of this section.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R. C. M. 1921.

3749. Statements to game warden by guides. Whenever a guide is employed by any person or party, such guide shall, at the expiration of the period of the time for which he was employed, make a written statement to the state game warden, stating the number of days he was employed, the number of persons guided, their names, residences, and the number of each kind of game killed, and, if non-residents, the number of their license.

History: En. Sec. 70, Ch. 173, L. 1917; re-en. Sec. 3749, R. C. M. 1921.

3750. Guides equally responsible with others for violations of law—must report violations. Any person acting as a guide for any person or party shall be equally responsible with such person or party for any violation of the law; any such guide who shall wilfully fail or refuse to report any violation of the law, by the said person or party employing him, shall be liable to the penalties as hereinafter provided.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R. C. M. 1921.

3751. Taxidermists' license—fee—penalty for violations. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game warden a taxidermist's license, and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, on the first day of each month, make a written report to the state fish and game warden, of all the articles of game, the kind and number of each, by whom owned, and the residence of owner, received during the past month, also of all the articles of game shipped and to whom and where shipped during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned and owner's address. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished accordingly, and in all cases of conviction their licenses shall be revoked.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923.

3752. Repealed—Chapter 77, laws of 1923.

3753. Disposition of fines, bond and penalties—serving out fines and costs. All fines, bonds, and penalties mentioned in any section of this act may be collected by civil action in the name of the state of Montana in any court of competent jurisdiction upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this act shall be paid to the state game warden, and by him paid to the state treasurer and by him placed to the credit of the fund to be known as the fish and game fund. All such fines, bonds and costs shall be collected without stay of execution, and the defendant, or defendants, may by order of the court be confined in the county jail of the county until such fine and costs are served out at the rate of \$2.00 per day.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R. C. M. 1921; amd. Sec. 25, Ch. 77, L. 1923.

3754. Payment of cost bill to county wherein costs were incurred. In all cases where there is a prosecution for the violation of fish and game laws, and costs have been incurred therein, a cost bill shall be prepared, including the cost of board of prisoners, and presented to the state board of examiners, and if by them allowed, the state treasurer shall thereupon pay the same out of the state game and fish fund to the county treasurer of the county wherein such costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R. C. M. 1921.

3755. Transportation of persons or property in furtherance of fish and game interests of state. Nothing in the provisions of sections 3779 to 3817 or of 6572 to 6574 of these codes, or in any of the other provisions of the laws of Montana, shall be construed to prevent, or shall prevent, the carriage or storage or handling of property, by railroads or other common carriers, free or at reduced rates, for the government of the United States or of the state of Montana, or for the owner or owners of any fish hatchery within this state, or any anglers' association, or sportsmen's club organized and existing therein, or of the state fish and game warden, whenever such property is being used for the exclusive purpose of stocking or planting with fish or fish eggs the waters within the state of Montana, or restocking the ranges and forests of the state of Montana with elk, deer, mountain-sheep, mountain-goats, grouse, ducks, or any of the so-called game animals or birds; and nothing therein shall be construed to prevent, or shall prevent, the issuing of free transportation to, or the free carriage of, or the selling of tickets at reduced rates to any and all persons while actually engaged in transporting fish or fish eggs, or stocking or planting the waters of this state with such fish or fish eggs, or to any and all persons while actually engaged in transporting and caring for any of the game animals or birds herein mentioned for restocking the ranges, forests, and public parks of this state.

History: En. Sec. 76, Ch. 173, L. 1917; re-en. Sec. 3755, R. C. M. 1921.

3756. Duty of grand juries, district judges, sheriffs, etc., respecting infractions of law. It shall be the duty of all grand juries to investigate all infractions of any provisions of this act, except such cases and violations as may have been tried by a court of competent jurisdiction, and upon due proof of violation of any of the said provisions, they shall proceed to indict such party or parties according to law, and it is hereby made the duty of the judge of the district court to call the attention of the grand jury to the provisions of this act. The district court shall have concurrent jurisdiction with justices of the peace of all offenses committed under the provisions of this act. And it is further provided that in construing this act, the provisions and penalties hereinbefore made and prescribed shall be deemed and held to include all Indians and half-breed Indians when outside the Indian reservation. It is further provided and declared to be the duty of any sheriff or peace officer of any county of this state, and the county attorneys of the respective counties, when it shall come to their knowledge, or they shall have reason to believe that any person has violated any of the sections of this act, to commence criminal proceedings against them either in the justice or district court, as in their judgment shall be proper, and any failure on the part of any county attorney, sheriff, or other peace officer, or game warden, who has knowledge of the violation of any of the provisions of this act, to commence such proceedings, shall be deemed a misdemeanor, and he shall be punished accordingly.

History: En. Sec. 77, Ch. 173, L. 1917; re-en. Sec. 3756, R. C. M. 1921.

3757. Duty of court and prosecuting officials with respect to violations of laws of another state. Whenever it shall appear under any prosecution under any section of this act making it a felony for the violation

thereof, that the crime was committed, or that the game was killed, or the fish caught in violation of law in any state other than Montana, it shall be the duty of the magistrate or the court before whom the trial was had to hold said defendant for at least ten days, and for such further time as may be necessary to allow the authorities of said state wherein the law has been violated to take the necessary steps to secure the arrest and extradition of the accused, if they so desire; and on the holding of the accused under the provisions of this section, it shall be the duty of the county attorney or attorney prosecuting to immediately notify the proper officers of the state and county in which it appears the law has been violated of all the facts and circumstances connected with said proceedings.

History: En. Sec. 78, Ch. 173, L. 1917; re-en. Sec. 3757, R. C. M. 1921.

3758. Act not applicable to cases of extreme hunger. When it is shown that any violation of the provisions of this act was for the purpose of preventing great suffering by hunger of any person or persons, which could not otherwise have been avoided, the provisions of this act shall not apply to said case.

History: En. Sec. 79, Ch. 173, L. 1917; re-en. Sec. 3758, R. C. M. 1921.

3759. Use of silencers or mufflers on firearms. It shall be unlawful for any person to take into the fields or forests, or to have in his possession while out for the purpose of hunting any wild animals or birds, any device or mechanism designed to silence or muffle, or minimize the report of any firearm, whether such device or mechanism be separated from or attached to any firearm.

History: En. Sec. 80, Ch. 173, L. 1917; re-en. Sec. 3759, R. C. M. 1921.

3760. Permit for taking fish or game for scientific purposes. It shall hereafter be lawful for the duly accredited representative of any school, college, university, or other institution of learning, who may be investigating a scientific subject making the same necessary, to take, kill, capture, and have in his possession for such purpose, any of the birds, fish, or animals found in this state, and to take, kill, and capture the same in any way, except by the explosion of dynamite; provided, that no more of any such birds, fish, or animals shall be taken than are necessary for such investigation; and provided, also, that any person who shall desire to engage in such scientific investigation shall apply to the state game warden for a license so to do. If the state game warden is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall place a time limit upon such investigation, and shall place a restriction upon the number of birds, fish, or animals, to be taken thereunder; and the person to whom such license is issued shall pay therefor the sum of five dollars, and shall have no right or authority to take, have, or capture any other or greater number of the birds, fish, or animals than are mentioned in said license. Any person violating the provisions of this section shall be guilty of a misdemeanor and punished accordingly.

History: En. Sec. 81, Ch. 173, L. 1917; re-en. Sec. 3760, R. C. M. 1921.

3761. Creations of game preserves—boundaries—provisions applicable to—Snow creek preserve. There are hereby created, for the better protec-

tion of all of the game animals and birds within the limits thereof, game preserves within the state of Montana, and more particularly hereinafter described as to the exterior limits, and it is hereby declared to be unlawful to hunt for, trap, or kill, or cause to be hunted for or killed, any of the animals herein mentioned, or to trap, capture, or molest any birds or animals of any kind whatever within the limits of the game preserves hereby created, or to carry or discharge any firearms, or to create any unusual disturbances tending to frighten or drive away any game animals or birds, or to chase the same with dogs or hounds within said preserves; provided, however, that permits to capture animals or birds, for the purpose of propagation, or to destroy mountain-lions, wolves, foxes, coyotes, wild-cats, minks, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such license fee and in accordance with such regulations as may be established for the administration of said preserves by the state game and fish commission. Said game preserves hereby created are more particularly described as follows:

Snow creek preserve. Beginning at a point on the north bank of the Missouri river, directly across and opposite the point where the dividing line between Hell creek and Crooked creek intersect the south bank of the Missouri river; thence southerly across the Missouri river, and continuing on top of a divide and forward to the top of the main divide between Big Dry creek and the Missouri river; thence westerly and on the top of the said last-mentioned divide to the top of the divide between Billy creek and Seven Blackfoot creek; thence north on said last-named divide to a point on the northern bank of the Missouri river directly opposite and across where said last-mentioned divide intersects the said bank; thence westerly along the north bank of the Missouri river, following the meanderings thereof to the point of beginning.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R. C. M. 1921.

3762. Pryor mountain preserve. Beginning at the northwest corner of section twenty-seven, township seven south of range twenty-five east; thence south to the southwest corner of section three, township eight south of range twenty-five east; thence east to the southeast corner of section three, township eight south of range twenty-five east; thence south to the southwest corner of section eleven, township eight south of range twenty-five east; thence east to the southeast corner of section eleven, township eight south of range twenty-five east; thence south to the southwest corner of section twenty-four, township eight south of range twenty-five east; thence east to the southeast corner of section twenty-four, township eight south of range twenty-five east; thence south to the southeast corner of section twenty-five, township eight south of range twenty-five east; thence east to that point which when surveyed will be the southeast corner of section thirty, township eight south of range twenty-six east; thence south to a point which when surveyed will be the southwest corner of section thirty-two, township eight south of range twenty-six east; thence east to that point which when surveyed will be the southeast corner of section thirty-six, township eight south of range twenty-seven east; thence north to that point which when surveyed will be the southwest corner of section thirty-

one, township seven south of range twenty-eight east; thence east to that point which when surveyed will be the southeast corner of section thirty-one, township seven south of range twenty-eight east; thence north to that point which when surveyed will be the northeast corner of section nineteen, township seven south of range twenty-eight east; thence west to the northeast corner of section twenty-four, township seven south of range twenty-five east; thence south to the southeast corner of section twenty-four, township seven south of range twenty-five east; thence west to the northwest corner of section twenty-seven, township seven south of range twenty-five east, to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3762, R. C. M. 1921.

3763. Sun river preserve. Beginning at a point on the continental divide of the Rocky mountains, due south of the head or source of the south fork of the north fork of Sun river, in what will be section eight, township eighteen north of range ten west, Montana meridian, when surveyed; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun river; thence northerly along and down the course of the south fork of the north fork of Sun river, as it winds and turns to its confluence with the north fork of the north fork of Sun river; thence northerly along the course of the north fork of the north fork of Sun river, as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky mountains; thence along the crest of the continental divide of the Rocky mountains southwesterly and southerly to the place of beginning intending hereby to include in said game-preserve all that territory lying between the said south fork of the north fork and the said north fork of the north fork of Sun river on the east, and the continental divide of the Rocky mountains on the west.

History: En. Sec. 1, Ch. 34, L. 1913; re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3763, R. C. M. 1921.

3764. Gallatin preserve. The boundaries of Gallatin game preserve are hereby established as follows: commencing at the southeast corner sec. 19, T. 9 S., R. 8 E., which section corner is on line with the north boundary of the Yellowstone national park, thence north one mile along east line of said section, thence west one mile, thence north one mile, thence west two miles, thence north three miles, thence west two miles, thence north two miles to the section corner common to section 16-17-20 and 21, T. 8 S., R. 7. E., which corner is on the divide between Cottonwood creek and Sphinx creek, thence west along said divide to the northwest corner of sec. 19 T. 8 S., R. 7 E., thence south and west along the divide between Tom Miner creek, Mol Heron and Specimen creeks to a point on the Gallatin-Yellowstone divide, which point is north 60° E., 45 chains from the southwest corner of section 27, T. 8 S., R. 5 E.; thence in a general southwesterly direction, following the top of the divide between Daly and Tepee creeks and Buffalo Horn creek a distance of approximately 4½ miles, to a point on this divide where the township line, between townships 8 and 9 S., R. 4 E., crosses said divide, which point is 20 chains due west from the southeast corner of section 36, T. 8 S., R. 4 E., M. M.; thence due west along the

township line between townships 8 and 9 S., R. 4 E., a distance of approximately $1\frac{3}{4}$ miles to a point on the east bank of the Gallatin river, where the township line between townships 8 and 9 S., R. 4 E., M. P. M. intersects the said river, thence in a southeasterly direction along the east bank of the Gallatin river to a point where the north section line of sec. 18, T. 9 S., R. 5 E., intersects the Gallatin river, thence due west along said section line and south section lines of section 11 and 12, T. 9 S., R. 4 E. to a point where said section lines intersect Sage creek, thence up the east bank of Sage creek to the confluence of Big Sage creek and Little Sage creek, thence south along the divide between the above mentioned creeks to Sage mountain, which is on the divide between Sage creek and Cabin creek, thence east along said divide to the divide between Cabin and Tepee creeks, thence south along said divide to the divide between Tepee creek and Red Canyon creek, thence south along said divide to the northwest corner of T. 12 S., R. 5 E., thence south a distance of two miles along the west line of said township, thence east a distance of approximately 4 miles to the west boundary of the Yellowstone national park to the northeast corner of said park, thence east along the north boundary of said national park to the place of beginning.

It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped, or killed, any game animal or fur-bearing animal or birds of any kind whatever, within the limits of said preserve or to carry or to discharge any firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to trap fur-bearing animals, or to destroy mountain lions, wolves, foxes, coyotes, wild cats, mink or other predatory animals or birds, or for carrying firearms, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 87, L. 1911; amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138, L. 1919; re-en. Sec. 3764, R. C. M. 1921; amd. Sec. 1, Ch. 80, L. 1925.

3765. Snowy Mountain preserve. There is hereby created, for the better protection of all of the game animals and birds within the limit thereof, game preserve within the state of Montana, and more particularly hereinafter described as to the exterior limits, and it is hereby declared to be unlawful to hunt for, trap, or kill, or cause to be hunted for, or killed, any of the animals herein mentioned, or to trap, capture, or molest any birds or animals of any kind whatever, within the limits of the game preserve hereby created, or to carry or discharge any firearms, or to create any unusual disturbance tending to frighten or drive away any game

animals or birds, or to chase the same with dogs or hounds within said preserve; provided, however, that permits to capture animals or birds, for the purpose of propagation, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, minks, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such license fee and in accordance with such regulations as may be established for the administration of said preserve by the state fish and game commission. Said game preserve hereby created is more particularly described as follows:

Beginning at the northwest corner of section 36, township 13 north, range 17 east; thence south along the section line between sections 35 and 36 one mile; thence up the east fork of the Dry Pole canyon to the top of the ridge between Dry Pole and Rock creek; thence south along the top of this ridge to the summit of the mountains; thence east along the south rim of the summit to a point about one-half mile east of the Knife Blade ridge; thence north along the crest of the ridge between the east and west forks of Cottonwood canyon to where both of these forks unite; thence down the main canyon north to the forest boundary: approximately one-fourth ($\frac{1}{4}$) mile east of section corners 34, 35, 26 and 27, township 13 north, range 18 east; thence west along the forest boundary five (5) miles to the northwest corner of section 36, township 13 north, range 17 east, to the point of beginning.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3765, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1933.

3766. Highwood national forest. All of that territory embraced within the exterior limits of that portion of the state of Montana which has heretofore been embraced, and which is included within the exterior limits of that territory known as the Highwood national forest, it being the intent and purpose of this description to include within the said game-preserve all of the land which is now embraced within the limits of said national forest reserve, except those portions of the same held in private ownership.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3766, R. C. M. 1921.

3767. Powder river game preserve. Beginning at the southeast corner of Custer county at the Montana-Wyoming state line, thence north and along the north and south line between Custer and Fallon counties to a point where same dissects the east fork of the Little Powder river; thence following down the center of said stream to the west bank of Little Powder river; thence down the west bank thereof to its confluence with Powder river; thence up the east bank of said Powder river to the junction of Cache creek therewith; thence up the channel of said Cache creek and the north fork thereof to the divide or watershed between Powder river and Tongue river; and thence south along said watershed to the Montana-Wyoming state line; and thence due east and along said state line to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3767, R. C. M. 1921.

3768. Flathead lake bird preserve. That certain islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres,

all being in the villa site of islands, situated in Flathead lake, in the county of Flathead, Montana, according to the official plat and survey of said land returned to the general land office by the surveyor general, be and the same are hereby made a perpetual place of refuge for birds of all kinds, the same to be called and known as "Flathead Lake Bird Preserve," which said lands shall be specially reserved for the breeding, propagating, and protection of all species of birds.

It shall be unlawful for any person to kill, shoot, capture, or destroy, or in any way injure any bird on said islands, or to interfere with their eggs or nests, or to shoot at, wound, or kill any bird within a distance of four hundred yards from the shore-line of said islands.

It shall be unlawful for any person to kill, shoot, capture, or destroy, or in any way injure any bird or animal on the university of Montana biological reserve located on the east shore of Flathead lake, or to interfere with their eggs or their young, or their nests, or to shoot at, wound, or kill any bird or any animal within four hundred yards of said university of Montana biological reserve, or to discharge any firearms on said reserve, or within four hundred yards thereof.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3768, R. C. M. 1921.

3769. Twin Buttes game preserve. For the better protection of game animals and birds, the following area in the Lewis and Clark national forest, in the Rocky mountains, state of Montana, is hereby set aside and established as a state game preserve, to be known as the "Twin Buttes Game Preserve," to-wit:

Beginning at the junction of Dearborn river with Falls creek in what will be township eighteen north of range seven west, Montana meridian, when surveyed, and running thence southerly along the course of said Fall creek to its junction with the tributary of said Fall creek known as the "East Fork," thence due south to the crest of the continental divide, thence northwesterly along the continental divide to the head of Blacktail creek, thence northerly along said Blacktail creek to its junction with said Dearborn river, thence down the said Dearborn river to the place of beginning.

It shall be unlawful for any person at any time to hunt, trap, kill, capture, chase, or molest any birds or animals of any kind whatever within the limits of said game preserve, or to discharge any firearms or to create any unusual disturbances tending to frighten or drive away any game animals or any birds within said preserve; provided, however, that permits to capture animals and birds for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not

less than thirty days or more than six months, or by both such fine and imprisonment.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisonment in the county jail not less than one nor more than sixty days, or both such fine and imprisonment.

Provided, however, that nothing in this act shall prevent any authorized official from the university of Montana from taking, capturing, or killing any birds in said preserves for scientific purposes only.

Subdivision 1. It shall be unlawful for any person or persons at any time to hunt, trap, kill, capture, or chase any game birds or animals of any kind whatever, within the limits of the said state game preserve; provided, however, that permits to capture game animals and birds for scientific purposes or for purposes of propagation may be issued by the state game warden on the payment of the fee of five dollars and in accordance with such regulations as may be established for said preserve, and it shall be lawful to destroy mountain-lions, wolves, foxes, coyotes, and wild-cats on said preserve.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or shall be imprisoned in the county jail for a term of not less than thirty days nor more than six months, or by both fine and imprisonment.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3769, R. C. M. 1921.

3770. Penalty for violation of act. Any person found guilty of a violation of any of the provisions of the foregoing sections relating to game preserves shall be guilty of a misdemeanor, and upon conviction thereof punished as herein provided.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3770, R. C. M. 1921.

3771. South Moccasin mountain game preserve. Beginning at the northeast corner of section thirty, township seventeen north, range eighteen east; running thence in a due westerly course a distance of five miles to the northwest corner of section twenty-eight, township seventeen north, range seventeen east; thence south two miles; thence west one-half mile to the northwest corner of section four, township sixteen north, range seventeen east; thence due south a distance of four miles to the southwest corner of section one, township sixteen north, range seventeen east; thence due east a distance of five miles to the southeast corner of section nineteen, township sixteen north, range eighteen east; thence due north a distance of four miles to the northeast corner of section six, township sixteen north, range eighteen east; thence due east one-half mile to the southeast corner of section thirty-one, township seventeen north, range eighteen east; thence due north two miles to the northeast corner of section thirty, township seventeen north, range eighteen east, Montana principal meridian, the place of beginning.

History: En. Sec. 1, Ch. 109, L. 1917; re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3771, R. C. M. 1921.

3772. Penalties for killing game in South Moccasin mountain game preserve—permits. It shall be unlawful for any person at any time to hunt, trap, kill, capture, chase, or molest any game animals or game-birds whatever within the limits of said game preserve, or to discharge any firearms or to create any unusual disturbance tending to frighten or drive away any game animals or any game-birds within said preserve; provided, however, that permits to capture and destroy mountain lions, wolves, foxes, coyotes, cats, wildcats, mink, and any other predatory animals may be issued by the state game warden upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not to exceed ninety days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 109, L. 1917;
re-en. Sec. 3772, R. C. M. 1921.

NOTE.—Section 3772 is a portion of chapter 109, laws of the fifteenth session, approved February 28, 1917, and is applicable only to the South Moccasin game preserve.

3773. Blackleaf game and bird preserve. Township twenty-six north of range eight west of the Montana meridian, in Montana, be, and the same is, hereby created a game and bird preserve, to be known as the "Blackleaf Preserve," within the county of Teton, state of Montana, and it is hereby declared to be unlawful to hunt for, trap, or kill, or cause to be hunted for, trapped, or killed, or to trap, capture or molest any of the game animals or birds of any kind whatever within the limits of said game and bird preserve hereby created, or to interfere with nests or eggs of such birds, or to carry or discharge any firearms, or to create any unusual disturbances tending to frighten or drive away any game animals or birds, or to chase the same with dogs or hounds within said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such license fee and in accordance with such regulations as now are or may be established for the administration of game and bird preserves by the state game and fish commission.

History: En. Sec. 1, Ch. 114, L. 1921; re-en. Sec. 3773, R. C. M. 1921.

3774. Violation of act, misdemeanor. Any violation of any of the provisions of this act shall be a misdemeanor, and upon conviction shall be punishable by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail of not less than ten days nor more than one hundred days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 114, L. 1921; re-en. Sec. 3774, R. C. M. 1921.

3775. Beaverhead fish and game preserve. For the better protection of fish and game animals and birds, the following described area in the

Beaverhead national forest, in Beaverhead county, state of Montana, is hereby set aside and established as a state fish and game preserve, to be known as the Beaverhead fish and game preserve.

Beginning at a point on the base line at the southwest corner of section thirty-six, township one north, range twelve west; thence north one mile to the northwest corner of said section thirty-six; thence west two miles to a point which, when surveyed, will be the southwest corner of section twenty-seven, township one north, range twelve west; thence north four miles to the southwest corner of section four, township one north, range twelve west; thence west one mile, more or less, to the southwest corner of said section four; thence north one mile, more or less, to the northeast corner of section five, township one north, range twelve west; thence west two miles, more or less, to the northwest corner of section six, township one north, range twelve west; thence south one mile, more or less, along the township line dividing ranges twelve and thirteen west to the southeast corner of section one, township one north, range thirteen west; thence west one mile to the southwest corner of said section one; thence south one mile to the southeast corner of section eleven, township one north, range thirteen west; thence west one mile to the southwest corner of said section eleven; thence south four miles to the southwest corner of section thirty-five, township one north, range thirteen west; thence west along the base line to a point which, when surveyed, will be the northwest corner of section three, township one south, range thirteen west; thence south four miles, more or less, to a point which, when surveyed, will be the southwest corner of section twenty-two, township one south, range thirteen west; thence east seven miles, more or less, to a point which, when surveyed, will be the southeast corner of section twenty-two, township one south, range twelve west; thence north one mile, more or less, to a point which, when surveyed, will be the northeast corner of section twenty-two, township one south, range twelve west; thence east two miles, more or less, to the southwest corner of section eighteen, township one south, range eleven west, surveyed; thence north two miles, more or less to the northwest corner of section seven, township one south, range eleven west, surveyed; thence west one mile, more or less, to a point which, when surveyed, will be the southwest corner of section one, township one south, range twelve west, unsurveyed; thence north one mile, more or less, to a point on the base line which, when surveyed, will be the northwest corner of section one, township one south, range twelve west; thence west one-quarter mile, more or less, along the base line to the southwest corner of section thirty-six, township one north, range twelve west, the place of beginning.

History: En. Sec. 1, Ch. 224, L. 1921; re-en. Sec. 3775, R. C. M. 1921.

3776. Same—penalty for hunting. It shall be unlawful for any person at any time to hunt, trap, kill, capture, molest, catch, or take any fish or game animals or birds of any kind whatever, within the limits of said fish and game preserve, or to discharge any firearms or create any unusual disturbances tending to frighten or drive away any game animals or birds within said preserve; provided, however, that permits to capture

animals, birds, or fish for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 224, L. 1921; re-en. Sec. 3776, R. C. M. 1921.

3776.1. Wolf Creek game preserve. For the better protection and propagation of game animals and birds, the following described area in Lincoln county, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Wolf Creek game preserve.

Beginning at the northeast corner of township thirty-one (31) north, range twenty-six (26) west, in Lincoln county; running thence west to the summit of the divide between the Flathead river and the Kootenai river known as Pinkham ridge; thence southerly along the summit of said divide to the south line of township thirty (30) north; thence east along the said township line to the southeast corner of township thirty (30) north, range twenty-six (26) west; thence north along the Horse Plains Guide Meridian, which is the line between Flathead and Lincoln counties to the point of beginning.

History: En. Sec. 1, Ch. 7, L. 1923.

3776.2. Same—regulation concerning hunting and fire-arms—penalty for violations. It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped, or killed any game animal or birds of any kind whatever, within the limits of said preserve; or to carry or discharge any fire-arms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; (provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy mountain lions, wolves, foxes, coyotes, wild cats, mink or other predatory animals or birds, or for carrying fire-arms, may be issued by the state game warden upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission.) Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 7, L. 1923.

3776.3. Teton-Spring Creek bird preserve. For the better protection and propagation of birds, the following described area in Teton county, state of Montana, is hereby set aside and established as a state bird preserve,

to be known as the Teton-Spring Creek bird preserve. All of sections two (2), three (3), four (4), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), and fifteen (15), in township twenty-four (24), north, range five (5) west.

History: En. Sec. 1, Ch. 33, L. 1923.

3776.4. Same—regulation concerning hunting and fire-arms—penalty for violations. It shall be unlawful for any person to hunt for, trap, capture, kill, or take or cause to be hunted for, trapped, or killed any birds of any kind whatever, within the limits of said preserve; or to discharge any fire-arms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the birds, or to chase the same with dogs in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy mountain lions, wolves, foxes, coyotes, wild cats, mink or other predatory animals or birds, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 33, L. 1923.

3776.5. Spotted Bear game preserve. For the better protection and propagation of game animals and birds, the following described area in Powell and Flathead counties, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Spotted Bear game preserve:

Beginning at the mouth of Cayuse creek where it flows into the South Fork of the Flathead river, in Powell county; running thence up Cayuse creek to the summit of the Continental divide; thence north along the Continental divide to a point opposite Pentagon mountain, in Flathead county; thence down Pentagon creek to its confluence with Spotted Bear creek; thence down Spotted Bear creek to the South Fork of the Flathead river; thence southerly up the west bank of the South Fork of the Flathead river to the point of beginning.

History: En. Sec. 1, Ch. 87, L. 1923.

3776.6. Same—regulation concerning hunting and firearms—penalty for violations. It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped or killed any game animal or birds of any kind whatever, within the limits of said preserve; or to discharge any fire arms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy mountain lions, wolves, foxes, coyotes, wild cats, mink, or other predatory animals or birds, may be issued

by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 87, L. 1923.

3776.7. Little Saint Joe game preserve. For the better protection and propagation of game animals and birds, the following described area in Mineral county, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Little Saint Joe game preserve. Beginning at a point on the south bank of the Missoula river where the divide between Dry creek and Oregon creek intersects said river bank; running thence westerly along said divide to the summit of the Bitter Root range, which is the line between Montana and Idaho; thence northwesterly along the summit of said Bitter Root range to a point where the Deer creek government trail intersects the Montana-Idaho state line; thence northerly along the east side of said Deer creek trail to a point where said trail intersects the south bank of the St. Regis river; thence down the south bank of the St. Regis river to its confluence with the Missoula river; thence up the south bank of the Missoula river to the point of beginning; except that the hereinafter described land now within the limits of said Little Saint Joe game preserve as above set forth by metes and bounds shall be excluded therefrom; to-wit: All privately owned land purchased prior to this act, under fence in sections 13, 14, 15, 22, 23, and 24 in township 17 north, range 27 west of the Montana principal meridian in Montana and sections 18, 19 and 30 in township 17 north, range 26 west of the Montana principal meridian in Montana.

History: En. Sec. 1, Ch. 91, L. 1923; amd. Sec. 1, Ch. 12, L. 1931.

3776.8. Same—regulation concerning hunting and firearms—penalty for violations. It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped, or killed any game animal or birds of any kind whatever, within the limits of said preserve; or to carry or discharge any firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy mountain lions, wolves, foxes, coyotes, wild cats, mink or other predatory animals or birds, or for carrying firearms, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00), or by im-

prisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 91, L. 1923; amd. Sec. 1, Ch. 12, L. 1931.

3776.9. Judith River game and bird preserve. For the better protection and propagation of game animals and birds, the following described area in Judith Basin county, in the state of Montana, is hereby set aside as the Judith River game and bird preserve.

Beginning at a point which is the intersection of the boundary of the Jefferson national forest and the center of the Middle Fork of the Judith river, thence up the center of Middle Fork to the mouth of Lost Fork creek, thence up the center of Lost Fork to the mouth of West Fork creek, thence up the center of West Fork to the west boundary of Judith Basin county, thence Southeasterly along the boundary of Judith Basin county to the nearest point of the South Fork of the Judith river, thence to source of said South Fork, thence down the center of said South Fork to the intersection with the boundary of the Jefferson national forest, thence north along the boundary of the Jefferson national forest to the place of beginning.

History: En. Sec. 1, Ch. 52, L. 1929; amd. Sec. 1, Ch. 120, L. 1935.

3776.10. Same—regulation concerning hunting and firearms. It shall be unlawful for any person to hunt for, trap, capture, kill or take, or cause to be hunted for, trapped, or killed any game animals or birds of any kind whatever, within the limits of the said preserve; or to carry or discharge any firearms, or to create any unusual disturbance, tending to or which may frighten or drive away any of the game animals or birds or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes or to destroy mountain lions, wolves, foxes, coyotes, wild cats, or other predatory animals or birds, or for carrying firearms, may be issued by the state game warden upon the payment of such fees and in accordance with such regulations as may be established for the said preserve by the state fish and game commission.

History: En. Sec. 2, Ch. 52, L. 1929; amd. Sec. 2, Ch. 120, L. 1935.

3776.11. Penalty for violations. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00), or by imprisonment in the county jail for not less than thirty days (30) nor more than six months (6), or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 52, L. 1929; amd. Sec. 3, Ch. 120, L. 1935.

3776.12. Little Snowy Mountain game preserve. For the better protection of game animals and birds, the following area in the county of Musselshell, state of Montana, is hereby set aside and established as the state game preserve, to be regulated by the laws relating to game preserves, and to be known as the Little Snowy Mountain game preserve, to-wit:

Beginning at the southwest corner of section 31, township 10 north, range 22 east, thence east along the south boundary of township 10 north, ranges 22, 23 and 24 east, a distance of about 18 miles to the southeast corner of

section 36, township 10 north, range 24 east; thence north along the east boundary of townships 10, 11 and 12 north, range 24 east a distance of about 15 miles to an intersection of Flatwillow creek; thence following Flatwillow creek and the South Fork of Flatwillow creek in a westerly direction for about $21\frac{1}{2}$ miles to an intersection of the South Fork of Flatwillow creek, with the west boundary of township 12 north, range 22 east; thence south along the west boundary of townships 12, 11 and 10 north, range 22 east a distance of about $16\frac{1}{4}$ miles to the southwest corner of section 31, township 10 north, range 22 east, the place of beginning.

History: En. Sec. 1, Ch. 127, L. 1931.

Constitutionality

Chapter 127, L. 1931, which is this section, creating a game preserve in Musselshell county, held unconstitutional by rea-

son of its defective title, insofar as any part of the metes and bounds description is within Fergus county. Volume 15, Attorney General's Opinions, Opinion No. 74, rendered Feb. 13, 1933.

3776.13. Same—regulation concerning hunting and firearms—penalty for violations. It shall be unlawful for any person at any time to hunt, trap, kill, capture, molest, catch, or take any game animals or birds of any kind whatever, within the limits of said game preserve, or to discharge any firearms or create any unusual disturbances tending to frighten or drive away any game animals or birds within said preserve; provided, however, that permits to capture animals, or birds, for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 127, L. 1931.

3776.14. Cherry Creek game preserve. For the better protection of game animals and birds, the following area in the counties of Sanders and Mineral, state of Montana, is hereby set aside and established as the state game preserve, to be regulated by the laws relating to game preserves, and to be known as the Cherry Creek game preserve, to-wit:

Beginning at a point where the northwest corner of section 29, of township 20 north of range 8 east intersects the summit of the Coeur d'Alene mountains, which is a point on the boundary line dividing Mineral and Sanders counties; thence in a northeast direction along the divide between Wilkes creek and Dry creek to the southwest corner of section 36, township 21 north, range 30 west; thence one (1) mile north to the northwest corner of section 36; thence east along section line nine and one-half ($9\frac{1}{2}$) miles to Eddy mountain; thence in a general southerly direction along the divide between Eddy and Swamp creek on the east, Cherry creek on the west over Penrose peak to Greenwood hill on the south boundary of township 20 north, ranges 28, 29 and 30 west, approximately fourteen (14) miles west along this township line to the point of beginning. Excepting that all privately

owned land purchased prior to this act, under fence, within the limits of the Cherry Creek game preserve shall be excluded therefrom.

History: En. Sec. 1, Ch. 91, L. 1933.

3776.15. Same—regulation concerning hunting and firearms—penalty for violations. It shall be unlawful for any person at any time to hunt, trap, kill, capture, molest, catch or take any game animals or birds of any kind whatever, within the limits of said game preserve, or to discharge any firearms or create any unusual disturbances tending to frighten or drive away any game animals or birds within said preserve; provided, however, that permits to capture animals or birds, for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee and in accordance with such regulations as may be established for said preserve by the state fish and game commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 91, L. 1933.

3777. Permit for breeding and propagating game birds and animals and fur-bearing animals. It shall hereafter be lawful for any person or persons, company, or association to engage in the business or occupation of propagating, owning and controlling wild game birds, game and fur-bearing animals of the state of Montana, upon premises wholly owned, leased or controlled by such person or persons, company, or association in said state of Montana, under such regulations as may be prescribed by the fish and game commission, and the supervision of said state fish and game warden. The applicant shall file with the commission, a statement of the place where the person owning said fur farm will conduct such business, and game and fur proposed to be raised on said premises, and shall for this purpose obtain a permit from the fish and game commission, which permit shall be issued by said commission, to capture alive in season or out of season such game birds, or game or fur-bearing animals as may be necessary for foundation stock for such game or fur farm. Such permit, however, shall limit the number of game birds or game or fur-bearing animals that may be so captured; the applicant shall be required to show that he has so fenced the place where such game or fur-farm is located, that no wild or public animal or bird can mix with those confined by him, and when license has been issued and a permit has been given to capture certain fur-bearing animals for foundation stock, said animals shall be subject to the same royalty or tax as the skins of the same animals are subject to. When the provisions of this section have been complied with the product of such game or fur-farm may be dealt with and sold as private property, but every sale must be reported to the state game warden, and the person owning said fur farm shall make an annual report of his said game or fur business to the fish and game commission.

Any person or persons who, at any time hereafter, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which fur-bearing animals are kept for breeding purposes, and on the fence of which enclosure are kept posted notices forbidding trespassing on the premises where the said animals are kept, and plainly discernible at a distance of not less than twenty-five yards therefrom, shall pass within the said fence or such enclosure or climb over, break or cut through the same for the purpose of entering the said enclosure, or for any other purpose whatsoever, shall be guilty of an offense and liable to the penalty hereinafter provided.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R. C. M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933.

3778. Penalties for violation of act. Any person found guilty of a violation of any of the terms of this act, if the same is defined as a misdemeanor under the terms hereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail of not less than ten days nor more than one hundred eighty days, or by both such fine and imprisonment.

Any person found guilty of the commission of a felony, as defined under the terms hereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail of not less than six months nor more than one year.

History: En. Sec. 85, Ch. 173, L. 1917; re-en. Sec. 3778, R. C. M. 1921.

3778.1. Hours of fishing in Georgetown lake. It shall be unlawful and a misdemeanor punishable as in this act hereinafter provided for any person to fish for or attempt to take in any manner any fish from the waters of Georgetown lake situated in Deer Lodge and Granite counties, state of Montana, during the hours intervening between 9:30 o'clock P. M. mountain time of each day and 5:00 o'clock A. M. mountain time of each following day.

History: En. Sec. 1, Ch. 23, L. 1929.

3778.2. Penalty for violation of act. Any person violating any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00), or by imprisonment in the county jail for not less than ten days nor more than one hundred days, or by both such fine and imprisonment, and in addition thereto, shall in the discretion of the court, forfeit his or her license to hunt or fish within the state of Montana for a period of one year from the date of conviction.

History: En. Sec. 2, Ch. 23, L. 1929.

3778.3. Fur dealers defined. Any person or persons, firm, company or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading or dealing, within the state of Montana, in the skins or pelts of any animal or animals, designated by the laws of Montana as fur-bearing or predatory animals, shall be deemed a fur dealer within the meaning of this act. If such fur dealer resides in or if his or its principal place of business is within the state of Montana he or

it shall be deemed a resident fur dealer. All other fur dealers shall be deemed non-resident fur dealers.

History: En. Sec. 1, Ch. 42, L. 1929.

3778.4. Records to be kept by fur dealers—inspection. Every fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) The number and kind of all skins or pelts purchased or sold by such fur dealer.

(b) The place where such skins or furs were killed or trapped and a separate record of all such skins or pelts as were killed or trapped outside the state of Montana.

(c) The trapping license number under which such furs or pelts were taken in cases where a trapper's license is required for the taking thereof.

(d) The names and addresses of the persons to whom such skins or pelts were sold or from whom they were purchased.

Said book shall be open at all reasonable times to the inspection of the state fish and game warden or any of his deputies, or any United States game warden, and shall be preserved and accessible for one year after the expiration of any license granted to said fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929.

3778.5. Persons required to procure fur dealer's license. All fur dealers as defined in this act shall before buying, selling or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within the state of Montana secure a fur dealer's license from the state fish and game warden, provided that no license shall be required for a hunter or trapper selling skins or pelts which he has lawfully taken, nor for any person not a fur dealer who purchases any such skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929.

3778.6. Classification and fees for licenses. The following classes of licenses shall be issued to-wit:

Resident fur dealer's license.

Non-resident fur dealer's license.

Fur dealer's agent's license.

and the following fees charged therefor:

Resident fur dealer's license, one (\$1.00) dollar.

Non-resident fur dealer's license, twenty-five (\$25.00) dollars.

Fur dealer's agent's license, ten (\$10.00) dollars.

Any person who is employed by a resident or non-resident fur dealer as a fur buyer shall be deemed a fur dealer's agent. Application for a fur dealer's agent's license must be made by the fur dealer employing said agent and no agent's license shall be issued until the necessary fur dealer's license has first been secured by the employer of said agent.

History: En. Sec. 4, Ch. 42, L. 1929.

3778.7. Time for issuance and expiration of licenses. The license required by this act shall be issued annually and shall expire on April 30 of

each year and no reduction in the fee charged for said license shall be made in any case where said license runs for less than one year.

History: En. Sec. 5, Ch. 42, L. 1929.

3778.8. Penalty for violations. Any person, firm, company or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00) or shall be imprisoned in the county jail for not to exceed thirty days or shall suffer both such fine and imprisonment.

History: En. Sec. 6, Ch. 42, L. 1929.

CHAPTER 309

REGULATION OF RAILROADS—BOARD OF RAILROAD COMMISSIONERS

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- 3846. Penalty for non-compliance with order of railroad commission.
- 3847. Regulation of business of railroads.

3779. Creation of commission. There is hereby created and established a board of railroad commissioners of the state of Montana, to be known as the "board of railroad commissioners of the state of Montana," said board to consist of three members who shall be qualified electors of the state. The first board of railroad commissioners shall be composed of the following persons, namely: B. T. Stanton of Gallatin county, Nathan Godfrey of Lewis and Clark county, and E. A. Morley of Silver Bow county. The persons named herein as commissioners shall serve until the first Monday of January, 1909, or until their successors are elected and qualified. At the general election to be held in November, 1908, there shall be elected three commissioners for said board, one for a term of two years, one for a term of four years, and one for a term of six years, and until their successors are elected and qualified. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said board so elected shall serve until his successor is elected and qualified. Biennially thereafter, at the general election, one member shall be elected for a period of six years, and until his successor is elected and qualified, to succeed the member of such board whose term shall expire on the first day of January following. Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one member to fill out the unexpired term for which such vacancy exists. No person in the employ of, or holding any official relations to any railroad, or owning any stocks, bonds, or other securities of any railroad, or who is or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds, or other securities thereof, shall be a member of said board. Any member of said board who, after his election or appointment to office, or after his induction into office, shall become an employee of or holder of

any official relation to any railroad, or who shall become an owner or holder of any stocks, bonds, or other securities of any railroad, or have or acquire any pecuniary interest in any stocks, bonds, or other securities of any railroad, shall forfeit his office, and the governor shall appoint a successor thereto as herein provided in case of a vacancy in said board. No commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.

History: En. Sec. 1, Ch. 37, L. 1907; Sec. 4363, Rev. C. 1907; re-en. Sec. 3779, R. C. M. 1921.

Constitutionality

The constitutionality of the creation of the railroad commission and the authority of the state, in the exercise of its police power for the preservation of the lives and property of its citizens, to place transportation by motor vehicles, trucks and busses, whether by common carrier or by individuals, under the supervision and control of such a commission are not here questioned. Similar action has been

taken in practically every state of the Union and has been universally upheld. *State v. Johnson*, 75 M 240, 248, 243 P 1073.

References

Cited or applied as section 4363, revised codes, in *State ex rel. Board of Railroad Commrs. v. District Court*, 53 M 229, 231, 163 P 115; *State ex rel. Boyle v. Hall*, 53 M 595, 165 P 757; *Doney v. Northern Pacific Ry. Co. et al.*, 60 M 209, 227 et seq., 199 P 432; *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 7 P 2d 919.

3780. Oath and bond. Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state. The members of said board and secretary thereof shall each give at the same time a bond to the state in the sum of twenty-five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of their respective offices.

History: En. Sec. 2, Ch. 37, L. 1907; Sec. 4364, Rev. C. 1907; re-en. Sec. 3780, R. C. M. 1921.

3781. Meetings of board—quorum—powers. The office of the board shall be in the city of Helena, and said office shall always be open during business hours, legal holidays and non-judicial days excepted. The board shall hold sessions at least once each month in the city of Helena, and at such other times and such other places within this state as may be expedient. The sessions of the board shall be public. A majority of the board shall constitute a quorum for the transaction of all business. The members of the board of railroad commissioners shall have the authority to administer oath and affirmations. The board shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R. C. M. 1921.

References

Cited or applied as section 4365, revised codes, in *State ex rel. Boyle v. Hall*, 53 M 595, 602, 165 P 757.

3782. Seal. The board shall have a seal, and such seal shall have the following words engraved thereon: "Board of Railroad Commissioners of the state of Montana," and said seal shall be affixed only to: First, writs;

second, authentications of a record or other proceedings, or to a copy of a document on file in the office of the said board. The courts of this state shall take judicial notice of such seal.

History: En. Sec. 4, Ch. 37, L. 1907; Sec. 4366, Rev. C. 1907; re-en. Sec. 3782, R. C. M. 1921.

3783. Officers of board. The board shall, immediately after its members have qualified, organize by electing one of its members as chairman, and shall appoint a secretary, who shall possess the same qualifications as members of said board, to serve during the pleasure of the board. Said board shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said board to the proper performance of its duties.

History: En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R. C. M. 1921; rep. in part by Ch. 176, L. 1931.

NOTE.—Chapter 176, laws of 1931, which amends sections 273, 274, and 275 of the codes, contained a repealing clause to the effect that part of this section should be repealed. Because of the indefinite wording of the repealing section of chapter 176, laws of 1931, the entire section is being left. See sections 273, 274 and 275 of this code, which provisions control when in conflict with this section.

Public Office

The chairmanship of the board of state railroad commissioners is not a public office, and the writ of quo warranto does not lie to determine the right of one of its members to act as chairman. State ex rel. Boyle v. Hall, 53 M 595, 601, 165 P 757.

References

State ex rel. Barney v. Hawkins et al., 79 M 506, 524, 257 P 411.

3784. Salaries. The salary of each commissioner shall be four thousand dollars per annum; the salary of the secretary shall be three thousand dollars per annum; and the salary of the stenographer employed by the board shall be fifteen hundred dollars per annum. The salaries of the persons so employed shall be paid as other expenses of the board are paid. The salaries of the commissioners and secretary shall be paid from the state treasury in equal quarterly payments, payable April 1st, July 1st, October 1st, and January 1st.

History: En. Sec. 6, Ch. 37, L. 1907; Sec. 4368, Rev. C. 1907; re-en. Sec. 3784, R. C. M. 1921.

NOTE.—Salary of stenographer changed to conform to later enactments. See, also, section 3896.

3785. Expenses of board and employees. Said commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid, the amounts to be passed on by the state board of examiners and paid as other expense of the board. The state shall furnish said board with suitable offices in the state capitol building at Helena, Montana, and provide it with all necessary furniture, stationery, and printing, upon requisitions signed by the chairman of said board.

History: En. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R. C. M. 1921.

John v. Northern Pacific Ry. Co., 42 M 18, 61, 111 P 632.

References

Cited or applied as section 4369, revised codes, in State ex rel. Boyle v. Hall, 53 M 595, 602, 165 P 757.

Free Transportation

Members and employees of the railroad commission should be allowed to ride free only when traveling on official business.

3786. Salary of rate clerk. The annual salary of the rate clerk of the railroad commission shall be three thousand dollars per annum.

History: En. Sec. 1, Ch. 109, L. 1919; re-en. Sec. 3786, R. C. M. 1921.

3787. Salary of senior inspector. The salary of the senior inspector appointed by, and working under, the board of railroad commissioners of the state of Montana shall be, and the same is hereby fixed at, the sum of two thousand five hundred dollars (\$2,500.00) per annum, payable monthly.

History: En. Sec. 2, Ch. 109, L. 1919; re-en. Sec. 3787, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1927.

3788. Salary of stenographer. The annual salary of the stenographer shall be fifteen hundred dollars per annum.

History: En. Sec. 3, Ch. 109, L. 1919; re-en. Sec. 3788, R. C. M. 1921.

3789. Allowance for postage, expressage, and other incidental expenses. Said board shall also be allowed the sum of one thousand dollars per annum for postage, expressage, and other incidental expenses. The accounts for payments authorized by this section shall be paid only when audited by the state board of examiners, and the board shall file, with its vouchers for such payments, a statement, verified by a member of the board, showing the names of all persons employed and the purpose for which they were employed, and the work performed by them.

History: En. Sec. 8, Ch. 37, L. 1907; Sec. 4370, Rev. C. 1907; re-en. Sec. 3789, R. C. M. 1921.

References

Cited or applied as section 4370, revised codes, in State ex rel. Boyle v. Hall, 53 M 595, 602, 165 P 757.

3790. Duties of secretary. The secretary shall keep a full and complete record of all proceedings of the board, and be the custodian of its records, and file and preserve at the office of the board all books, maps, documents, and papers intrusted to his care, and be responsible to the board for the same. He shall perform such other duties as the board may prescribe.

History: En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R. C. M. 1921.

3791. Process to compel attendance and examination of witnesses. The process issued by said board shall be under seal and extend to all parts of the state. Said board shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record, or by any person appointed by the board for such purpose. In the event the process issued by the board is a subpoena for the attendance of a witness, and he shall have failed, neglected, or refused to obey the same, the board is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having such witness appear in such trial, and the court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person or persons as a witness before the court; and the board shall thereupon have the power and authority to examine such witness before said court, under oath, respecting any inquiry or investigation being made by said board, under and pursuant to the provisions of this act. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corpora-

tion, for examination in said court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by said board.

History: En. Sec. 10, Ch. 37, L. 1907; Sec. 4372, Rev. C. 1907; re-en. Sec. 3791, R. C. M. 1921.

3792. Definitions and terms. The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing, and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term "transportation" shall include all instrumentalities of shipment or carriage. The term "railroad" shall be taken to mean any corporation, company, or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleeping-car companies. The term "board" in this act shall be taken to mean the board of railroad commissioners of the state of Montana. The provisions of this act shall apply to all persons, firms, or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R. C. M. 1921.

3793. "Railroad" defined. The word "railroad," whenever used in this act shall be held to mean and include railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and all common carriers.

History: En. Sec. 12, Ch. 37, L. 1907; re-en. Sec. 4374, Rev. C. 1907; re-en. Sec. 3793, R. C. M. 1921.

References
Crowley v. Polleys Lumber Co., 92 M 27, 34 et seq., 9 P 2d 1068.

3794. Power of board to fix rates, schedules, and classifications. The power and authority is hereby vested in the said board, and it is hereby made its duty to adopt, as soon as practicable after the organization of the board, all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this act. The said board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said board shall also have the power, and it shall be its duty, to fix and establish for all or any connecting lines

of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads. The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by said board. And it shall be within the province of the board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa; and in proper cases, where it appears that the United States interstate commerce commission law has been violated, it is hereby made the duty of said board to make complaint to the interstate commerce commission of the United States, and to aid such commission in any investigation it may make concerning violations of the United States law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R. C. M. 1921.

Complaint

Since the presumption obtains that the railroad commission fixed and established reasonable rates in obedience to this section, and that the rate as established is in accordance with the approved and published tariff, a complaint which fails to allege that freight charges were not in accordance with such tariff is defective. *Doney v. Northern Pacific Ry. Co. et al.*, 60 M 209, 227 et seq., 199 P 432.

Established Tariff Has Effect of Statute

A tariff duly filed and published by the railroad commission has the force and effect of a statute and is binding alike upon the shipper and carrier, until modified by the tribunal authorized to change it. *Doney v. Northern Pacific Ry. Co. et al.*, 70 M 209, 227 et seq., 199 P 432.

Exclusive Remedy

Held, that the remedies prescribed by the railroad commission act for recovery of damages caused by the exaction of discriminatory or unreasonable freight charges, are exclusive, and that therefore a complaint based upon the common-law remedy and drawn in entire disregard of the provisions of the statute did not state a cause of action, the common-law remedies having been superseded by said chapter. *Doney v. Northern Pacific Ry. Co. et al.*, 70 M 209, 227 et seq., 199 P 432.

Powers Distinguished from I. C. C.

While under the interstate commerce act railroad rates are voluntary, initiated and filed by the carriers, under the Montana act the rates are prescribed or ap-

proved by the state board of railroad commissioners. *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 199, 7 P 2d 919.

Rates Cannot be Changed Retroactively

Held, that under the railroad commission act creating, and prescribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in *Doney v. Northern Pac. Ry. Co.*, 60 M 209, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) *Montana etc. Co. v. Great Northern Ry. Co.* 91 M 194, 199, 7 P 2d 919. Decision affirmed in *Sunburst O. & R. Co. v. Great Northern R. R. Co.*, 91 M 216, 7 P 2d 216; 278 U. S. 358.

Rates in General

Determination whether a shipper has in the past been wronged by the exaction of an unreasonable or discriminatory rate is a judicial act, while determination as to what rate shall be charged in the future is a legislative or administrative. *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 199, 7 P 2d 919.

Id. Under the provisions of the railroad commission act, a carrier is prohibited from collecting rates either higher or lower than those fixed by the state board of railroad commissioners.

Id. A voluntary reduction of a rate by a carrier, with the consent of the board of railroad commissioners, does not make the prior rate unlawful, unreasonable or discriminatory or the basis of an action for damages.

Id. So long as railroad rates established by the state railroad commission are in

force, they are presumed to be reasonable, and neither the commission nor the courts have power retroactively to declare such rates unreasonable, and thus permit recovery of damages to the extent of the overplus paid by a shipper or an undercharge collected by the carrier.

3795. Making schedules effective. When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation, or common carrier who may desire it, an opportunity to make an explanation or showing, or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification. All classifications and rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board. Each railroad affected by the provisions of this act shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type, showing all classifications and rates fixed and established by the said board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than one hundred dollars nor more than five hundred dollars for each day that such failure or neglect is continued.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R. C. M. 1921.

3796. Power to alter classification or rate—hearing complaint. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, and such amended, altered, or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said board shall not make or establish any increase or raise in the rate of charge for the transportation of freight by any railroad within the state of Montana, unless ten days' notice be published in two daily papers, one of which shall be published in the city of Helena, setting forth in said notice that at a certain time and place the

board will proceed to make and establish such increase or raise in the rate of charge for the transportation of freight; and the board shall at such time and place hold a public hearing thereon, at which time and place the public generally, or any person, firm, or corporation, shall be given an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held. The said board must, within forty days after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R. C. M. 1921.

Board Without Power to Change Freight Rates Retroactively

Held, that under this chapter, creating, and prescribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in *Doney v. Northern Pac. Ry. Co.*, 60 M 209, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 7 P 2d 919. Decision affirmed in *Sunburst O. & R. Co. v. Great Northern*

R. R. Co., 91 M 216, 7 P 2d 216, 278 U. S. 358.

Hearing Complaint

A shipper deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discriminatory, must proceed under section 3810, if he desires to have it declared so; where no rate has been fixed or the one established is considered excessive, he must apply to the commission for investigation and determination of his contention, under this section, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months from the date of payment, under section 3808. *Doney v. Northern Pacific Ry. Co. et al.*, 60 M 209, 227 et seq., 199 P 432.

References

Montana etc. Co. v. Great Northern Ry. Co., 91 M 194, 200, 7 P 2d 919.

3797. General powers of board. The board shall have the general supervision of all railroads, express companies, car companies, sleeping-car companies, freight and freight-line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said board and within its power and authority under the provisions of this act; and shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein, or by the officers, agents, or employees thereof. The board shall also have the power and authority, and it shall be its duty, to examine and inspect, or cause to be examined and inspected, under its authority, all books, records, files, and papers of the persons and companies specified above, in so far as the same may be pertinent to any matter under investigation before said board, and to hear and take testimony in the progress of any inquiry or investigation authorized by this act.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R. C. M. 1921.

References

Doney v. Northern Pacific Ry. Co. et al., 60 M 209, 227 et seq., 199 P 432; *State v. Johnson*, 75 M 240, 248, 243 P 1073.

3798. Investigation into accidents. The said board, or some members thereof to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon, or in the destruction of property greater in value than two thousand dollars. The testimony taken on any such hearing shall be transcribed and filed in the office of the board.

History: En. Sec. 16a, Ch. 37, L. 1907; Sec. 4379, Rev. C. 1907; re-en. Sec. 3798, R. C. M. 1921.

3799. Duty of railroad company to report accidents. It is hereby made the duty of every railroad company operating any line of railroad within this state, promptly upon the occurrence or in connection with the operation of its line within the state, of any accident such as is mentioned in the next preceding section, to report the same to the board of railroad commissioners, in which report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R. C. M. 1921.

3800. Witnesses—compensation; immunity. The said board, in making any examination or investigation provided for in this act, shall have the power to issue subpoenas for the attendance of witnesses, by such rules as it may prescribe. Each witness shall receive the sum of three dollars per day, together with the sum of five cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission. And no witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing or things, before any court or magistrate, or commissioner or board, upon any investigation, proceeding or trial under the provisions of this act, or for any violation of any of them, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify, or produce evidence; and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

History: En. Sec. 18, Ch. 37, L. 1907; Sec. 4381, Rev. C. 1907; re-en. Sec. 3800, R. C. M. 1921.

3801. Power to compel railroad companies to provide adequate accommodations and service. The board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting-rooms for passengers, and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R. C. M. 1921.

3802. Attorney general as attorney for board. The attorney general is hereby constituted the attorney and counselor of said board, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by said board under this law, in his own county; provided, that said board shall have power and authority to employ special counsel, with the consent and approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this law. It is hereby made the duty of the attorney general, upon direction of said board, and of the county attorney of each county in this state, upon direction of the attorney general, to institute and prosecute, and to appear and defend, any action or proceeding arising under the provisions of this law. All suits and proceedings filed in any court of this state, under the provisions of this law, shall have precedence over all other business in such court, save and except criminal business and original proceedings in the supreme court. The fees and expenses of additional counsel shall be fixed and determined by the state board of examiners, and allowed and paid as items of expense the same as other items of expense of said board of railroad commissioners.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R. C. M. 1921.

References

Cited or applied as section 4383, revised

codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 232, 163 P 115; State v. Board of Railroad Commrs., 73 M 1, 4, 234 P 834.

3803. Court review of action of board—pleadings. Actions to review the determination of the board fixing any classification, rate, toll, charge, regulation, or order, or the refusal of said board to make, fix, or establish any classification, rate, toll, charge, regulation, or order, shall be commenced in the district court of the county having jurisdiction thereof by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions, and notice may be served upon the party defendant, either by summons issued and served as provided for in the code of civil procedure in civil actions, or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than five days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions. If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said board to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court, or by the judge thereof at chambers.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R. C. M. 1921.

References

Cited or applied as section 4384, revised codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 232,

163 P 115; Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432; State v. State Board of Railroad Commrs., 73 M 1, 5, 234 P 834; State v. Johnson, 75 M 240, 248, 243 P 1073; Montana etc. Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919.

3804. Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand, or receive from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said board of railroad commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than five hundred dollars nor more than two thousand dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

History: En. Sec. 22, Ch. 37, L. 1907; Sec. 4385, Rev. C. 1907; re-en. Sec. 3804, R. C. M. 1921.

3805. Discrimination in rates and charges. If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand, or receive from any person, company, firm, or corporation, a greater rate, charge, or compensation than that fixed and established by the said board of railroad commissioners for the transportation of freight, passenger, or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight-car, or for any other service performed, or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana a sum not less than five hundred dollars nor more than two thousand dollars.

History: En. Sec. 23, Ch. 37, L. 1907; Sec. 4386, Rev. C. 1907; re-en. Sec. 3805, R. C. M. 1921.

3806. Jurisdiction to enforce orders of board. The district court shall have jurisdiction to enforce, by proper decree, injunction or order, the rates, classifications, rulings, orders, and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, rate, classification, or regulation made by the commission and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, order, rate, or classification is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent,

servant or servants, or employee of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate, or classification shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R. C. M. 1921.

References

Cited or applied as section 4387, revised codes, in *State ex rel. Board of Railroad Comms. v. District Court*, 53 M 229, 232, 163 P 115.

3807. Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R. C. M. 1921.

References

Montana etc. Co. v. Great Northern Ry. Co., 91 M 194, 201, 7 P 2d 919.

3808. Actions to recover excess charges. Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made, provided such action shall be brought within three years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be, or held to be, a waiver on the part of such person or shippers of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R. C. M. 1921; amd. Sec. 1, Ch. 155, L. 1925.

Board Without Power to Change Freight Rates Retroactively

Held, that under this chapter, creating, and prescribing the duties of, the board

of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in *Doney v. Northern Pac. Ry. Co.*, 60 M 209, inconsistent with the above holding and at variance with the correct conclu-

sion announced therein, overruled.) *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 7 P 2d 919. Decision affirmed in *Sunburst O. & R. Co. v. Great Northern R. R. Co.*, 91 M 216, 7 P 2d 216, 278 U. S. 358.

Jurisdictional Allegation

Under this section an allegation that payment of alleged discriminatory or unreasonable freight charges was made in the county in which the action is brought is jurisdictional. *Doney v. Northern Pacific Ry. Co. et al.*, 60 M 209, 227, 199 P 432.

3808.1. Time for commencement of action. All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after.

History: En. Sec. 2, Ch. 155, L. 1925.

3809. Action to determine reasonableness of rates or classification. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R. C. M. 1921.

Injunction

The district court has no power of control over any order of the railroad commission relating to rates and charges, except by final judgment; and this necessarily deprives a railroad company, as well as the shipper, of the right to invoke, and prohibits the court from issuing a preliminary injunction in this behalf. It has, however, jurisdiction to use the provisional remedy of injunction in limine to suspend an order made by the commission, requiring a railroad company to operate a local passenger-train each way daily

between designated stations, pending a final determination of an action brought by the company to have the order reviewed as unjust and unreasonable. *State ex rel. Board of Railroad Commrs. v. District Court*, 53 M 229, 233, 163 P 115.

References

Doney v. Northern Pacific Ry. Co. et al., 60 M 209, 227 et seq., 199 P 432; *State v. Board of Railroad Commrs.*, 73 M 1, 5, 234 P 834; *State v. Johnson*, 75 M 240, 248, 243 P 1073; *Chicago etc. Ry. Co. v. Board of R. R. Commrs.*, 76 M 305, 312, 247 P 162; *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 200, 7 P 2d 919.

3810. Action by shippers. Any shipper, or other person interested, may bring an action in the district court of the county where the principal

office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board of railroad commissioners as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order, made, fixed, or established by the board under the provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive, except as herein otherwise provided; and provided further, that in any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes.

History: En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R. C. M. 1921.

Board Without Power to Change Freight Rates Retroactively

Held, that under this chapter, creating, and prescribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in *Doney v. Northern Pac. Ry. Co.*, 60 M 209, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 7 P 2d 219. Decision affirmed in *Sunburst O. & R. Co. v. Great Northern R. R. Co.*, 91 M 216, 7 P 2d 216, 278 U. S. 358.

Procedure

A shipper deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discrim-

inatory, must proceed under this section, if he desires to have it declared so; where no rate has been fixed or the one established is considered excessive, he must apply to the commission for investigation and determination of his contention, under section 3796, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months from the date of payment, under section 3808. *Doney v. Northern Pacific Ry. Co. et al.*, 60 M 209, 234, 199 P 432.

Held, on application for a writ of certiorari to annul an order of the board of railroad commissioners directing the station facilities at a certain town to be removed to another town, relator had a sufficient remedy under this section, by an action in the district court to determine whether the order was just and reasonable, and that therefore certiorari did not lie. *State v. Board of Railroad Comms.*, 73 M 1, 5, 6, 234 P 834.

References

Cited or applied as section 4391, revised codes, in *State ex rel. Board of Railroad Comms. v. District Court*, 53 M 229, 232, 163 P 115; *State v. Johnson*, 75 M 240, 248, 243 P 1073; *Montana etc. Co. v. Great Northern Ry. Co.*, 91 M 194, 7 P 2d 919.

3811. Penalty for violation of law by railroad. If any railroad shall wilfully violate any provision of this act, or shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said railroad commission relating to rates and charges, or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state of Montana a penalty of not more than five hundred dollars.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R. C. M. 1921.

3812. Recovery of penalties and forfeitures. All penalties and forfeitures incurred, levied, and made under the provisions of this act, shall be collected by said board of railroad commissioners and paid over to the state treasurer and credited to the general fund; provided, however, that should the said board fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein, for the space of sixty days after notice of the cause of complaint by such person or shipper aggrieved, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the said board.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R. C. M. 1921.

3813. Acceptance of favors and gratuities from railroads prohibited. No railroad commissioner nor the said secretary shall, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney, or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission or of the board; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than five hundred dollars, or imprisonment not more than six months, or by both such fine and imprisonment.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R. C. M. 1921.

Traveling on Private Business

When members and employees of the railroad commission are traveling on private business they should pay fare. *John v. Northern Pacific Ry. Co.*, 42 M 18, 61, 111 P 632.

3814. Annual reports from railroads. The board shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state, prescribe the manner in which such reports shall be made, and may require specific answers to all questions upon which the board may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the board. The board may, at such other times as it may deem necessary, require such other information, statements, or reports as may be deemed necessary, and fix the time for filing of the same. Any railroad failing or refusing to make or file such annual report, or failing

or refusing to furnish such additional information, statements, or reports, as may be demanded by the board, shall forfeit the sum of five hundred dollars for each day that such refusal or neglect shall be continued.

History: En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R. C. M. 1921.

3815. Annual report of the board. Said board shall make and submit to the governor annual reports containing a full and complete account of the transactions of its office, together with such facts, suggestions, and recommendations as may be by it deemed necessary, which report shall be published as the reports of other departments of the state. The said report shall contain a statement as to the number of accidents investigated by the board, as herein provided, and the number of persons killed or injured in them, and generally the causes of such accidents.

History: En. Sec. 33, Ch. 37, L. 1907; Sec. 4396, Rev. C. 1907; re-en. Sec. 3815, R. C. M. 1921.

3816. Duties of board—suspension of commission. It is hereby made the duty of such board to see that the provisions of this act and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. And said board shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all civil causes, original proceedings in the supreme court excepted. If any commissioner shall fail to perform his duties as provided for in this act, he may be removed from office as provided for by section 11687 to 11702 of the penal code, and upon complaint made and good cause shown, the governor is authorized to suspend any commissioner or commissioners, and if, in his judgment, the exigencies of the case require, the governor is authorized to appoint temporarily some competent person or persons to perform the duties of such suspended commissioner or commissioners during the period of such suspension.

History: En. Sec. 34, Ch. 37, L. 1907;
Sec. 4397, Rev. C. 1907; re-en. Sec. 3816,
R. C. M. 1921.

References
Montana etc. Co. v. Great Northern
Ry. Co., 91 M 194, 202, 7 P 2d 919.

3817. Existing rights of actions not affected by law. This act shall not have the effect to release or waive any right of action by the state or any person for any right, penalty, or forfeiture which may have arisen, or may hereafter arise, under any law of this state, and all penalties accruing under this act shall be cumulative to each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R. C. M. 1921.

3818. Jurisdiction of railroad commission over docks and wharves. The supervision of docks and wharves by the board of railroad commissioners is provided for by section 1609 of this code.

History: New section recommended by code commissioner, 1921.

3819. Railroad commission to inquire into observance of laws for safety of employees. It is hereby made the duty of the board of railroad

commissioners to make inquiry into the observance by all railroads within this state of the laws of the United States and of the state of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same, and to lay complaint before the proper officer, state or federal, of any infraction of any of such laws, and to prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

History: En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R. C. M. 1921.

3820. Results to be stated in annual report. Said board shall, in its annual report, set out what effort it has made to carry out the provisions of this act, with the result thereof, and in detail what steps it has taken to procure to be prosecuted any violations of any such acts of which it has secured information.

History: En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R. C. M. 1921.

3821. Schedule of rates for transporting prisoners. The board of railroad commissioners of the state of Montana is hereby authorized and directed to promulgate the schedule of passenger rates, fixing the fare to be charged at the rate of one cent per mile, for transporting prisoners regularly sentenced to the state prison in the state of Montana, and the necessary guards to insure the safekeeping of such prisoners, to and from said state prison to any point within the state of Montana, for the purpose of conveying such prisoners to such point, or from such point to be employed on public roads or other public work.

History: En. Sec. 1, Ch. 2, L. 1917; re-en. Sec. 3821, R. C. M. 1921.

3822. Maintenance of loading platform by railroad. Every railroad company doing business in this state shall, within sixty days after notice from the board of railroad commissioners of the state of Montana, erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms, as required by this and the following section, within the required sixty days, the said board of railroad commissioners is authorized and empowered, and it is made its duty, to notify such railroad company to appear before it at a certain time and place and show cause, if any there is, why such board of railroad commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The said board of railroad commissioners shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platform, if the said board of railroad commissioners shall, upon such examination and hearing, deem such platform necessary. Any notice required to be served upon any railroad company to carry out any of the provisions of this section, or similar provisions relating to the enlarging of such platforms, may be served upon any agent of said company within the state of Montana.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R. C. M. 1921.

3823. Dimensions and other requirements of platform. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the said board of railroad commissioners, above the rails of the track, with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R. C. M. 1921.

3824. Enlargement of platform. The board of railroad commissioners shall have power to order an enlargement of such platforms whenever petitioned to that effect, and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R. C. M. 1921.

3825. Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R. C. M. 1921.

3826. Violation of law a misdemeanor—penalty. Every railroad company neglecting or refusing to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R. C. M. 1921.

3827. Rules for equipment of cars, trains, and engines. The railroad commission of the state of Montana shall have full authority, after notice and hearing, to make and enforce rules and regulations providing for the installation on and equipment of trains, cars, or engines, with safety appliances, and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection rules and regulations to be from time to time co-extensive with the requirements of, and in conformity to, the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission as then effective.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R. C. M. 1921.

3828. Brake equipments. The railroad commission of the state of Montana shall have the power and authority to examine and inspect all brakes and brake equipment and, after notice and hearing, to make and enforce reasonable rules and regulations with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules and regulations to be from time to time co-extensive with the requirements of and in conformity to the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission as then effective.

History: En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R. C. M. 1921.

3829. Industrial and commercial spurs—provisos. The railroad commission of the state of Montana shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state of Montana to construct industrial or commercial spurs to industries when

there is or will be sufficient traffic to require such facilities; provided, however, that any such industrial or commercial spur will not exceed one mile in length from headblock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs; and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings, unless such station, yards, sidings, or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R. C. M. 1921.

References

Chicago etc. Ry. Co. v. Board of R. R. Com., 76 M 305, 315 et seq., 247 P 162.

NOTE.—See also section 3834, which apparently repeals by implication a part of the above section.

3830. Proceedings in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, or order is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, or order, by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employees of the defendant, who are in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 5, Ch. 136, L. 1909; re-en. Sec. 3830, R. C. M. 1921.

3831. Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R. C. M. 1921.

3832. Action to determine reasonableness of rule. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or, in any county where any such rule, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order, made, fixed or established by the board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of the board affecting any railroad shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the rules, regulations, and orders, made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R. C. M. 1921.

3833. Omitted—Unconstitutional. See *Chicago etc. Ry. Co. v. Board of R. R. Commrs.*, 76 M 305, 312 et seq., 247 P 162.

3834. Powers of railroad commisison as to stations and crossings. The board of railroad commissioners of the state of Montana shall have power and authority, in addition to all other powers hereafter vested in said board, whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, after notice and hearing, to order and compel the installation of suitable platforms and station-houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the board of railroad commissioners. And such company or corporation shall, when so ordered by the board of railroad commissioners, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. And said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station-house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the board of railroad commissioners, and the expense of construction and maintenance of such station-house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the board of railroad commissioners. Such

corporation connecting by crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall also, when so ordered, after notice and hearing by the board of railroad commissioners, unite and connect the tracks of said several corporations so as to permit the transfer from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads; provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public. The expense of construction and maintenance shall be apportioned, and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the board of railroad commissioners, and the expense thus incurred by the board of railroad commissioners shall be paid by the railroad or railway companies jointly interested, on such basis as the commission may order.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R. C. M. 1921.

3835. "Paralleling" defined. "Paralleling," as referred to in this act, shall be held to mean where the main tracks of parallel lines of railroad or railway are not more than two thousand feet apart, when measured from center to center.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R. C. M. 1921.

3836. Joint rates—division among carriers. Whenever the board of railroad commissioners of the state of Montana shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves, and in the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of sixty days after the order fixing and determining such joint rate shall have been made by the board of railroad commissioners, then the said board of railroad commissioners shall have power, and it is hereby made its duty, to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least twenty days' notice, and upon such hearing the board of railroad commissioners shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

History: En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R. C. M. 1921.

3837. Power of railroad commission as to side-tracks, stock-yards and chutes. The board of railroad commissioners of the state of Montana shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stock-yards, stock-chutes, or stock-pens, whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R. C. M. 1921.

3838. Enforcement of regulation in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad, railway, or common carrier is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to him. If, in such action, it be the decision of the court that the rule, regulation, or order is not unreasonable or unjust, and that in refusing to comply therewith the railway, railroad, or common carrier is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation, or order by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant, officer, agent, servant, or servants or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punished by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt, until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board of railroad commissioners; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. Any appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 4, Ch. 105, L. 1913; re-en. Sec. 3838, R. C. M. 1921.

3839. Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R. C. M. 1921.

3840. Action to determine reasonableness of rule. Any railroad, railway, or common carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation, or order of the board of railroad commissioners is applicable, against the said board as defendant, to deter-

mine whether or not any such rule, regulation, or order made, fixed or established by said board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of said board affecting any railroad, railway or common carrier shall be deemed final and conclusive; and provided, further, that in any action, hearing or proceeding in any court, the rules, regulations, and orders made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R. C. M. 1921.

3841. Penalty for failure of railroad to comply with regulations. Any railroad or railway company, or common carrier, its officers or agents, subject to the provisions of this act, who shall refuse or fail to comply with the provisions of this act, or any order, rule, or regulation relative thereto, made by the board of railroad commissioners, shall be subject to a fine of not less than twenty-five dollars, nor more than fifty dollars, and each day of such refusal or failure shall be deemed a separate offense and be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the board of railroad commissioners in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R. C. M. 1921.

3842. Railroad commission may order electric signal bells installed. Authority is hereby given to the board of railroad commissioners of the state of Montana, upon petition in writing made to it by any board of county commissioners of the state of Montana, to order railroad companies to install and maintain an electrically operated bell or other signaling device at all points in the state of Montana where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state of Montana, and where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one-half mile on either side of said crossing; provided, however, all persons driving motor vehicles upon the public highways of this state, outside of corporate limits of incorporated cities or towns, where the view is obscure, or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten nor more than one hundred feet from where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

History: En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R. C. M. 1921.

Duty of Guest Driver

The rule that the failure of a driver of an automobile to observe the requirements

of this section, in driving motor vehicles upon the public highway, may not by imputation be made the default of his guest or passenger, does not absolve the latter from taking such precaution for his own safety as under the circumstances are

reasonable. *Grant v. Chicago etc. Ry. Co.*
et al., 78 M 97, 252 P 382.

References

Normandin v. Payne, 65 M 543, 548, 212
P 285; *Knott v. Pepper*, 74 M 236, 244,
239 P 1037.

3843. Petition for installation—hearing and order. It shall be the duty of the board of railroad commissioners of the state of Montana, upon the presentation of any petition by a board of county commissioners, requesting the installation of the signaling device provided for in this act, to hold a hearing, if same be demanded by the railway company or companies affected, upon due notice to all interested parties in such manner as the commission shall direct. Upon said hearing, if a hearing be demanded, or without a hearing if same has not been demanded, the commission shall make such order as it sees fit, and shall, in its discretion, order or refuse to order the installation of the signaling devices as petitioned for by said board of county commissioners.

History: En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R. C. M. 1921.

3844. Construction and requirements of signal devices. All electric bells or other signaling devices required by this act to be installed, upon direction of the board of railroad commissioners of the state of Montana, shall be so constructed that they will operate automatically upon the approach of a train, and will commence sounding when any approaching train is at such distance from said crossing as the board of railroad commissioners may determine and order, and shall continue to sound until the train has reached said crossing.

History: En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R. C. M. 1921.

3845. Time within which signaling device must be installed—limitation upon power of railroad commission. It shall be the duty of every person, firm, or corporation, owning or operating any line of railroad within the state of Montana, to equip its crossing with the signaling device herein described, within three months after being ordered by the board of railroad commissioners of the state of Montana so to do. Nothing herein contained shall be so construed as to authorize the board of railroad commissioners to order the installation of signaling devices, except upon petition of a board of county commissioners, and after a hearing as hereinbefore provided for.

History: En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R. C. M. 1921.

3846. Penalty for non-compliance with order of railroad commission. Any railroad company, person, firm, or corporation failing to comply with the terms of this act, or failing to equip its lines with its signaling device herein described, when ordered by the board of railroad commissioners of the state of Montana so to do, within the time specified by said order, shall forfeit to the state of Montana the sum of fifty dollars for each and every failure to equip each crossing under its control with the signaling device required by this act, and each day's failure to comply with the terms of this act shall constitute a separate offense and shall give rise to a like liability.

History: En. Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R. C. M. 1921.

3847. Regulation of business of railroads. The general regulation of the business of railroads and railroad companies is provided for in sections 6503 to 6644 of the civil code.

History: New section recommended by code commissioner, 1921.

CHAPTER 310

MOTOR CARRIERS—SUPERVISION AND REGULATION

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3847.1. Definition of terms. Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) The word “board” means the board of railroad commissioners of the state of Montana.

(b) The term “corporation” means a corporation, company, association or joint stock association.

(c) The term “person” means an individual, firm or copartnership.

(d) The word “certificate” means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

(e) The term "public highway" means every public street, road, highway, or way in this state.

(f) The term "motor vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons and/or property.

(g) The words "between fixed termini or over a regular route" when used in this act, mean the termini or route between or over which any motor carrier usually or ordinarily operates any motor vehicles, even though there may be periodical or irregular departures from said termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, within the meaning of this act, shall be a question of fact to be determined by the board.

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting the operation of school busses which are used in conveying school children to and from district or other schools, or to the transportation of freight or passengers by motor vehicles when done occasionally and not as a regular business, or to the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies and materials in construction and production is concerned.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly. An occasional accommodative transportation service by a person not in the transportation business shall not be construed as a service for hire, even though the persons transported shares in the cost or pays for the service.

(j) The word "compensation," as used in this act, shall mean the charge imposed upon motor carriers in consideration of the use of the highways in this state by such motor carriers, as provided in section 3847.16.

(k) The word "railroad" means the movement of cars on rails, regardless of the motive power used therefor.

History: En. Sec. 1, Ch. 184, L. 1931.

Constitutionality

Held, that the motor carrier act, regulating the use of state highways by motor carriers for hire, is a valid enactment as against the contentions of a private contract carrier that by requiring him to obtain from the state board of railroad commissioners a certificate of public convenience and necessity, the act is invalid, as denying him the right to contract, and offending against the equal protection of the law and the due process of the law clauses

of the constitution. (Justices Ford and Angstman dissenting.) *Barney v. Board of Railroad Comms.*, 93 M 115, 125 et seq., 17 P 2d 82; *Fulmer v. Board of Railroad Comms.*, 96 M 22, 25 et seq., 28 P 2d 849.

Held, that the motor carrier act is not violative of section 23, article V, of the constitution, nor is it rendered unconstitutional as special legislation (const., art. V, sec. 26). *State v. Healow et al.*, 98 M 177, 38 P 2d 285.

Held, that the motor carrier act (this act), is not unconstitutional as offend-

ing against the provisions of sections 23 and 26, article V, constitution, with relation to defect of title and the enactment of special laws, by the provision in section 14 of the chapter as to the county in which a suit for injunction for the enforcement of the act may be brought. *Great Northern Ry. Co. v. Hatch et al.*, 98 M 269, 277, 38 P 2d 976.

Operation and Effect

In the construction of the motor carrier act (chapter 184, L. 1931), the purpose of which is the supervision, regulation and control of the state highways by motor carriers for hire, a matter of legislative discretion, all existing statutes relating to their use must be taken into consideration. *Barney v. Board of Railroad Comms.*, 93 M 115, 125 et seq., 17 P 2d 82.

Id. The state highways belong to the people for use in the ordinary way; their use for the purpose of gain is special and extraordinary, which the state may prohibit altogether or permit on such conditions as it may deem proper to impose.

Id. As a means of protecting its highways from abusive use, and the public from the evils incident to unregulated competition, the state has the power to require both common and private motor carriers for hire to obtain from the state railroad commission certificates of public convenience and necessity as a condition precedent to the right to conduct such business. (Chapter 184, L. 1931.)

The requirement of this chapter that one desiring to operate a motor vehicle for hire must secure a certificate of convenience and necessity carried with it a

discretion on the part of the board of railroad commissioners to refuse it if in its judgment it is unwise to grant it; hence the contention that it has no power to deny it to one qualified and capable to furnish adequate service is without merit. *Fulmer v. Board of Railroad Comms.*, 96 M 22, 25 et seq., 28 P 2d 849.

Id. Under this chapter, making it incumbent upon the board of railroad commissioners in passing on an application for a certificate to operate motor vehicles for hire, to give "reasonable consideration" to existing transportation facilities, including railroads, the general rule is that the certificate should be denied, unless the service furnished is inadequate, or additional service would benefit the general public, or unless the existing carrier has been afforded an opportunity to furnish such additional service as may be required.

Held, that the provisions of the motor carrier act relating to the persons who must procure certificates of convenience and necessity before they may operate a motor vehicle for hire, are broad enough to include the driver thereof, employed by its owner to operate it (whether such owner be an individual or corporation), and that therefore, in a prosecution against owner and driver, contention that a penalty for a violation of the act could not be imposed upon the latter, may not be sustained. (Mr. Justice Angstman dissenting.) *State v. Healow et al.*, 98 M 177, 186, 38 P 2d 285.

References

Christie T. & S. Co. v. Hatch, 95 M 601, 603, 28 P 2d 470.

3847.2. Classification of motor carriers—operation according to provisions of act required. (a) Motor carriers are hereby divided into three (3) classes for the purposes of this act, to be known as:

Class A motor carriers,

Class B motor carriers,

Class C motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station to station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station to station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking.

(b) It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act.

History: En. Sec. 2, Ch. 184, L. 1931.

3847.3. Board of railroad commissioners to supervise and regulate motor carriers. The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and non-discriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers. All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the board shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931.

3847.4. Rates—reasonableness—schedule to be fixed by board—filing of schedule. All fares, rates and charges made for any service rendered or to be rendered in the transportation of persons or property by any class A or class B motor carriers, or in connection therewith, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared unlawful. The board of railroad commissioners is authorized to make for each class A and class B motor carrier doing business in this state, a schedule of specific reasonable fares, rates and charges for the transportation of persons and property in this state, and authority to make schedules shall include the power of classification of all freight. The board shall have authority to fix different rates or schedules of rates for different motor carriers, of the same or different classes, and for different routes and different parts of the same route of any motor carrier. The board shall from time to time and as often as circumstances may require, change and revise such schedule. Every class A and class B motor carrier shall file with the board its schedule or tariffs showing all effective rates, fares, charges, and classifications for the transportation of persons and property in this state, or for any service in connection therewith;

and no time schedule, tariff, rate or classification shall be changed or altered without the written consent of the board.

History: En. Sec. 4, Ch. 184, L. 1931.

3847.5. Order of board required for discontinuance of service. No class A or class B motor carrier shall abandon or discontinue any service established under this act without an order of the board therefor.

History: En. Sec. 5, Ch. 184, L. 1931.

3847.6. Discrimination forbidden. No class A or class B motor carrier shall charge or demand or collect or receive a greater or less or different remuneration for the transportation of passengers or property, or for any service in connection therewith, than the rates, fares, and charges which have been legally established and filed with the board; nor shall any such motor carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the board; nor make or give any preference or advantage to any particular person, company, partnership, corporation, or locality, or any particular description of traffic, in any respect whatever, nor subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect.

History: En. Sec. 6, Ch. 184, L. 1931.

3847.7. Revocation of certificate or privilege after hearing—right of review. The board may at any time, by its order duly entered, after a hearing had upon reasonable notice to the holder of any certificate or privilege hereunder and an opportunity to such holder to be heard, at which it shall appear that such holder violated, violates, or refuses to observe any of the board's orders, rules, or regulations, or any provision of this act, suspend, revoke, alter, or amend any certificate or privilege issued under the provisions of this act; but the holder of any such certificate or privilege shall have all the rights of rehearing and review, as to such order of the board, as is provided in this act.

History: En. Sec. 7, Ch. 184, L. 1931.

3847.8. Certificate required of class A motor carriers—contents of application—fee. (a) No class A motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the board, under the provisions of this act, a certificate declaring that public convenience and necessity require such operation.

(b) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highway or highways over which, and the fixed termini between which, or the regular route or routes over which it intends to operate.

3. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

4. The proposed time schedule.

5. A schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers.

6. A complete and detailed description of the property proposed to be devoted to the public service.

7. A detailed statement showing the assets and liabilities of such applicant.

8. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00).

History: En. Sec. 8, Ch. 184, L. 1931.

3847.9. Certificate required of class B motor carriers—contents of application—fee. (a) No class B motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway, in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operations.

(b) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

1. Name and address of the applicant and the names and addresses of its officers, if any.

2. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

3. The locality and character of operations to be conducted.

4. A schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers.

5. A complete and detailed description of the property proposed to be devoted to the public service.

6. A detailed statement showing the assets and liabilities of such applicant.

7. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00).

History: En. Sec. 9, Ch. 184, L. 1931.

3847.10. Certificate required of class C motor carriers—contents of application—fee. (a) No class C motor carrier as in this act defined, shall hereafter operate for the distribution, delivery, or collection of goods,

wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highways or highways over which and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed; or the particular city, town, station, or locality from and/or to which the applicant intends to operate.

3. The kind of transportation, the character of the goods, wares, merchandise, or commodities to be distributed, delivered or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery or collection.

4. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00).

History: En. Sec. 10, Ch. 184, L. 1931.

3847.11. Hearing to consider applications—notice—matters considered—manner of conducting hearings. Upon the filing of such application by a class A or class B or class C motor carrier, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer testimony for or against the granting of such certificate. If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and con-

tinuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931.

3847.12. Authorization of board required for transfer of privilege—partial or conditional granting of privilege—duration of certificate. Any right, privilege or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred and inherited as other property only by the authorization of the board. The board may issue the certificate, as prayed for, or issue it for the partial exercise only of the privilege sought; and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier, as in this act provided, such certificate shall continue in force until terminated by the board for cause, as herein provided, or until terminated by the owner's failure to comply with section 3847.13.

History: En. Sec. 12, Ch. 184, L. 1931.

3847.13. Compliance with rules and regulations of board required of certificate holder. No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules and regulations of the board as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the board may require for: (a) the prompt payment of all com-

pensation or fees due the state under the provisions of this act, and (b) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the board to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

History: En. Sec. 13, Ch. 184, L. 1931.

3847.14. Manner of procedure—enforcement of orders of board. Insofar as possible and applicable, the provisions of statutes prescribing the procedure before the board in cases involving rates, facilities, service or other affairs of railroads in this state, including forms of applications, complaints, answers, orders, and notices of hearing, the conducting of hearings, compelling the attendance and testimony of witnesses and the production of records, data and information, the preparation, recording and serving of reports and orders of the board, shall be followed and shall govern in all proceedings and investigations before the board in cases arising in connection with the performance by the board of its duties or the exercise of its jurisdiction under the provisions of this act. Orders and final determinations of the board in all proceedings pursuant to the provisions of this act shall be enforced in the manner provided for the enforcement of orders of the board of railroad commissioners by the provisions of chapter 309 of the political code, and laws amendatory thereof. Provided, further, that if any motor carrier shall operate in violation of the provisions of this act, or shall fail or neglect to obey any lawful order of the board, the board or any party injured may apply to any court of competent jurisdiction, in any county where such motor carrier is engaged in business, for the enforcement of this act or such order; and the court shall enforce obedience thereto by writ of injunction, or other proper process, mandatory, or otherwise, and to restrain such carrier, its officers, agents, employees, or representatives from further violation of this act, or such order, or to enjoin upon it, or them, obedience to the same.

History: En. Sec. 14, Ch. 184, L. 1931.

Operation and Effect

Though, generally speaking, all equitable suits (injunction, inter alia) are properly triable, under section 9096, in the county in which defendants, or any of them, reside, this section specifically provides that a party injured by the illegal operation of a motor vehicle for hire may by writ of injunction seek en-

forcement of the act in any county in which the motor carrier is engaged in business; hence, where injunctive relief was sought against such a carrier in a county between the county seat of which and that of his home county defendant was doing business, the court erred in granting a change of venue to the latter county. *Great Northern Ry. Co. v. Hatch et al.*, 98 M 269, 277, 38 P 2d 976.

3847.15. Provisions for review of orders of board. The provisions of chapter 309 of this code, and laws amendatory thereof, shall be applicable and shall govern in all proper cases for the review by the district or supreme court of orders and final determinations of the board in proceedings involving the rates, services, facilities, or other affairs of motor carriers in this state.

History: En. Sec. 15, Ch. 184, L. 1931.

3847.16. Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges.

(a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act, shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of July and the fifteenth day of July, of each calendar year, pay to the board of railroad commissioners of the state of Montana the sum of ten dollars (\$10.00), for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half ($\frac{1}{2}$) of the compensation and fees herein provided, and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The board shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this act relating to the payment of compensation and to the making of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the board as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the board may in its discretion revoke the carrier's certificate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d) All compensation, fees, or charges, imposed and accruing under the provisions of this act, shall be a lien upon all property of the motor carrier used in its operations under this act; said lien shall attach at the time the compensation, fees, or charges become due and payable, and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.

History: En. Sec. 16, Ch. 184, L. 1931.

3847.17. Motor carrier fund—composition—use. All of the fees and compensation charges collected by the board under the provisions of this act shall be transmitted to the state treasurer who shall place the same to the credit of a special fund designated as "motor carrier fund"; such fund shall be available for the purpose of defraying the expenses of administration of this act and the regulation of the businesses herein described, and shall be accumulative from year to year. All expenses of whatsoever kind

or nature of the board incurred in carrying out the provisions of this act shall be audited by the state board of examiners and paid out of the "motor carrier fund." Such fund shall not come within the restriction of any law of this state governing payment of expense incurred in a previous year, it being intended that such fund shall be applied to the payment of any necessary costs or expenses in carrying out the provisions of this act, whether incurred during the ensuing year or previous fiscal years, and such "motor carrier fund" or accumulations thereof, are hereby appropriated for the payment of the costs and expenses rendered necessary in the carrying out of the provisions of this act.

History: En. Sec. 17, Ch. 184, L. 1931.

3847.18. Records of motor carriers to be open for inspection by board—system of accounts to be prescribed—reports required. All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the board or by any authorized agent or employee of the board. The board shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, insofar as possible. On or before the fifteenth day of July of each year, every motor carrier authorized to engage in such business shall file with the board a report, under oath. In addition to such annual reports every motor carrier shall prepare and file with the board, at the time or times and in the form to be prescribed by the board, annual reports, special reports and statements giving to the board such information as it shall require in order to perform its duties under this act.

History: En. Sec. 18, Ch. 184, L. 1931.

3847.19. Penalties for violations. Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931.

3847.20. Continuation of business by motor carriers already licensed. All motor carriers legally licensed by the board of railroad commissioners, under the provisions of chapter 154, laws eighteenth legislative assembly, 1923, as amended by chapter 103, laws nineteenth legislative assembly, 1925, and chapter 141, laws twenty-first legislative assembly, 1929, and engaged in business at the time of the effective date of this act, shall be entitled to

receive from the board, without further application, a certificate as provided in this act authorizing the continuance of their businesses.

History: En. Sec. 20, Ch. 184, L. 1931.

NOTE.—The laws referred to in this section were repealed by Ch. 184, L. 1931 (this chapter).

3847.21. Acts which prima facie deem person to be motor carrier. Any person, firm or corporation maintaining a public motor vehicle stand, or by sign, symbol, or device or vehicle or clothing, or by advertisement holds forth transportation for compensation, or solicits the transportation of persons or property for compensation among the public at trains, hotels or other places, or solicits for trips for compensation, shall be deemed, prima facie, a "motor carrier" subject to this act, and the burden of proof shall be on such person, firm or corporation to disprove said status.

History: En. Sec. 21, Ch. 184, L. 1931.

Operation and Effect

Where several city mercantile establishments entered into a contract of purchase of a truck agreeing to pay the seller \$1,000, payable \$100 down and \$75 per month for twelve months, the truck to be used for transporting merchandise bought or sold, the purchasers assuming the expense of upkeep and operation as a certain ratio as between themselves based on the weight of merchandise carried for

each per mile, the seller being employed as transportation manager at \$6 per day, he to receive a bonus for good service, neither the purchasers nor the seller, their employee, were carriers for hire, and, therefore, under this section, were not required to secure a certificate of public convenience and necessity from the board of railroad commissioners to entitle them to the use of state highways in the transportation of such merchandise. *Christie T. & S. Co. v. Hatch*, 95 M 601, 603, 28 P 2d 470.

3847.22. Private carriers not converted into common carriers. Nothing in this act shall be construed as converting or attempting to convert a private carrier into a common carrier, and it is hereby declared that this act is intended primarily as a regulation of the public highways of the state of Montana.

History: En. Sec. 22, Ch. 184, L. 1931.

3847.23. Application of act to interstate carriers and motor carriers operating in national parks. The terms and provisions of this act shall apply to commerce with foreign nations, and to commerce among the several states of this Union, insofar as such application may be permitted under the provisions of the constitution of the United States, treaties made thereunder and the acts of Congress; provided that it shall not be necessary for an interstate or international motor carrier, in order to obtain a permit as herein provided, to make any showing of public convenience and necessity, except as to the transportation of passengers and/or freight between points within this state, the power to regulate such operation being specifically reserved herein; and provided further, the board is hereby authorized to exercise any additional power that may from time to time be conferred upon the state by any act of Congress, and provided further, that any motor carrier operating in and about any national park, whose rates and methods of accounting are controlled by contract with the United States, shall not be subject to any regulation by the commission in conflict with such contract or in conflict with any regulation by the United States made pursuant to such contract or made pursuant to an act of Congress of the United States.

History: En. Sec. 23, Ch. 184, L. 1931.

3847.24. Invalidity of part of act not to affect remainder. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

History: En. Sec. 24, Ch. 184, L. 1931.

3847.25. Repealing clause. This act shall not repeal any of the existing law or laws relating to motor-propelled vehicles and owners and operators, or requiring compliance with any condition for their operations except chapter 154, laws eighteenth legislative assembly, 1923, chapter 103, laws nineteenth legislative assembly, 1925, and chapter 141, laws twenty-first legislative assembly, 1929.

History: En. Sec. 25, Ch. 184, L. 1931.

3847.26. Fees required for filing various documents. The public service commission of Montana shall, except as otherwise provided by law, require and receive fees before filing any annual reports, tariffs, schedules and supplements thereof and shall require and receive fees for all copies of orders, documents, classifications, blank forms and other instruments prepared by it or on file in the office thereof, except as otherwise provided by law to be furnished free of charge, in accordance with the following schedule:

Filing annual reports, each	\$5.00
Filing tariffs, time schedules and supplements thereto, each	2.00
For issuing certificates of public convenience and necessity to motor carriers, each	2.00
Classification for public utilities, each	1.50
Classification for motor carriers, each .....	.50
For copy of rules and regulations for motor carriers, each .....	.25
Blank forms of annual reports for utilities and common carriers	Cost

Nothing herein contained shall be construed to require or authorize the public service commission to collect fees for the filing of any annual reports, tariffs, schedules and supplements thereof which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935.

3847.27. Additional fees concerning motor carriers. In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity issued by the public service commission, shall between the first and fifteenth days of January, April, July and October of each year, file with the public service commission a statement showing the gross operating revenue of such carrier for the preceding three months of operation, or portion thereof, and shall pay to the board a fee of one-half of one per cent of the amount of such gross operating revenue; provided, however, that the minimum annual fee which shall be paid by each class A and class B carrier for each vehicle

registered and/or operated under the provisions of the motor carrier act shall be thirty dollars (\$30.00) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the motor carrier act shall be fifteen dollars (\$15.00).

History: En. Sec. 2, Ch. 100, L. 1935.

3847.28. Disposition made of fees. All fees collected from motor carriers shall be, by the commission, paid into the state treasury and shall be, by the state treasurer, placed to the credit of the motor carrier fund. All other fees and charges collected by the commission under the provisions of this act shall be by the commission paid into the state treasury and shall be by the state treasurer placed to the credit of a fund to be known as the "public service commission fund," and the general and contingent expenses of the public service commission shall be by the state treasurer paid out of said public service commission fund upon presentation of duly verified claims therefor, which claims shall have been approved by the commission and audited by the state board of examiners.

History: En. Sec. 3, Ch. 100, L. 1935.

CHAPTER 311

REGULATION OF COMMON CARRIERS OF OIL

- Section 3848. Common carriers of oil defined.
 3849. Pipe lines public utilities—jurisdiction.
 3850. Regulation of construction pipe lines—eminent domain.
 3851. Establishment of rates—hearing—complaints.
 3852. Railroad commissioners may require connections—facilities—rules.
 3853. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.
 3854. Discrimination prohibited—establishment of rates.
 3855. Rules for prevention of waste.
 3856. Penalty for violation of act—recovery of damages.
 3857. Duty to transport without discrimination.
 3858. Effect of partial invalidity act.

3848. Common carriers of oil defined. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana, for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement

to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R. C. M. 1921.

3849. Pipe lines public utilities—jurisdiction. It is declared that the operation of these pipe lines, to which this act applies, for the transportation of crude petroleum, in connection with the purchase or purchase and sale of such crude petroleum, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R. C. M. 1921.

References

State ex rel. Continental S. Co. v. Tullock, 68 M 268, 277, 217 P 348.

3850. Regulation of construction pipe lines—eminent domain. The right to lay, maintain, and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this state, is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipe lines as hereinbefore made. Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipe lines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state, by filing with the board of railroad commissioners of Montana an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the rights so acquired it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed in this act. This right to run along, across or over any public road or highway, as before provided for, can only be exercised upon condition

that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof be subject also to the supervision of the county commissioners of the county in which said highway is situated. And, provided that in the exercise of the privileges herein conferred, such pipe lines shall compensate the county for any damage done to such public road, in the laying of pipe lines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipe line company the right to use any public street or alley in any incorporated city or town, except by express permission from the city or governing authority thereof.

Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this act, which shall have filed with the board of railroad commissioners of Montana its acceptance of the provisions of this act, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights of way, easements, and property of any person or corporation necessary for the construction, maintenance or authorization of his, its, or their common carrier pipe line, the manner and method of such condemnation and the assessment and payment of the damages therefor to be the same as is provided by law in the case of railroads.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R. C. M. 1921.

References

State ex rel. Continental S. Co. v. Tullock, 68 M 268, 277, 217 P 348.

3851. Establishment of rates—hearing—complaints. The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten days' and not more than thirty days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R. C. M. 1921.

References

State ex rel. Continental S. Co. v. Tullock, 68 M 268, 277, 217 P 348.

3852. Railroad commissioners may require connections—facilities—rules. Every common carrier as above defined shall exchange crude petro-

leum tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage, and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R. C. M. 1921.

3853. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board. Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of Montana shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum on hand of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R. C. M. 1921.

3854. Discrimination prohibited—establishment of rates. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates

charged under same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand barrels of petroleum in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R. C. M. 1921.

3855. Rules for prevention of waste. The board of railroad commissioners of Montana, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

History: En. Sec. 8, Ch. 8, Ex. L. 1921; re-en. Sec. 3855, R. C. M. 1921.

3856. Penalty for violation of act—recovery of damages. Any common carrier as herein defined who shall violate any provisions of this act or who shall fail to perform any duty herein imposed or any valid order of the board of railroad commissioners of Montana, when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the attorney general of the state of Montana in the name of the state and for its use. Actual damages may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of party aggrieved, and may be maintained in any court of proper jurisdiction having due regard to the ordinary statutes of venue. For the wilful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor; each violation of any of such provisions shall be deemed a separate and distinct offense and upon conviction thereof the party violating same shall be fined in a sum of not less than fifty dollars nor more than one thousand dollars, and may be further

punished by confinement in the county jail for not less than ten days nor more than six months.

History: En. Sec. 9, Ch. 8, Ex. L. 1921; re-en. Sec. 3856, R. C. M. 1921.

3857. Duty to transport without discrimination. Subject to the provisions of this act and the rules and regulations which may be prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

History: En. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R. C. M. 1921.

3858. Effect of partial invalidity act. If any of the provisions of this act shall be held unconstitutional, or for any reason shall be held void, such holding shall not have the effect to nullify the remaining parts or provisions of this act, but the parts not so held to be void shall nevertheless remain in full force and effect.

History: En. Sec. 11, Ch. 8, Ex. L. 1921; re-en. Sec. 3858, R. C. M. 1921.

CHAPTER 312

REGULATION OF NAVIGATION—INSPECTION OF BOATS AND VESSELS BY RAILROAD COMMISSION

- Section 3859. Appointment of inspectors of water craft.
 3860. Inspection and examination—determination of capacity of boat.
 3861. Access to boats for inspection—tying up craft when unsafe or if operated contrary to law—misdemeanor to release craft.
 3862. Licenses to boats, captains, and pilots—regulations.
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 3876. Powers and duties of railroad commissioners.
 3877. Operation of boats without complying with law.
 3878. Penalty for violation of act.

3859. Appointment of inspectors of water craft. That each inspector of boilers, appointed by the industrial accident board under the provisions of section 2712, shall be appointed and designated by the board of railroad commissioners of the state of Montana as ex-officio inspector of steam vessels, other boats propelled by machinery, sailing craft, ferry boats and barges, other than private pleasure boats, on any of the navigable waters of the state of Montana.

History: The first navigation laws were en. as Secs. 2580 to 2589, inc., Pol. C. 1895; re-en. as Secs. 1327 to 1336, inc., Rev. C. 1907. These provisions were superseded by Ch. 63, L. 1913. This section en. Sec. 1, Ch. 63, L. 1913; re-en. Sec. 3859, R. C. M. 1921; amd. Sec. 1, Ch. 105, L. 1923.

3860. Inspection and examination—determination of capacity of boat. The inspector shall annually, or as often as the board of railroad commis-

sioners may order, inspect every steamboat or other barge propelled by machinery, or sailing boat, ferry-boat or barge, other than private pleasure boats, and shall examine carefully the hull of such boats and their equipment, and require such changes, repairs, and improvements to be adopted and used as he may deem expedient for the safety of all such boats. He shall also fix the number of passengers that may be transported upon any boat; he shall likewise fix the number of tons of freight that may be carried upon any such boat, barge, or ferry-boat. He shall, whenever he deems it expedient to do so, visit any such boat and examine into its condition or their condition, for the purpose of ascertaining whether such boat or boats have a certificate from the board of railroad commissioners, and whether such boats are conformable to and obeying the conditions imposed by this act and by the board of railroad commissioners. The owner, master, pilot, and captain or engineer of such vessel or boat shall answer all reasonable questions, and give all the information in his or her possession in regard to such boat or boats, or any of them, concerning their machinery and the manner of managing said boat. The said inspector shall examine all life-saving appliances and lifeboats carried on any such vessels, steamboats, or other boats propelled by machinery, as well as all ferry-boats. The inspector shall report the condition of all such boats, life-saving appliances, and lifeboats to the board of railroad commissioners.

History: En. Sec. 2, Ch. 63, L. 1913; re-en. Sec. 3860, R. C. M. 1921.

3861. Access to boats for inspection—tying up craft when unsafe or if operated contrary to law—misdemeanor to release craft. The inspector shall at all times have free access to any and all of such boats and parts thereof, and shall have free transportation thereon for the purpose of making such inspection; and he is hereby authorized, whenever in his judgment the master, owner, captain, or pilot of any of the boats mentioned in this act has failed to comply with the provisions of this act, or when he deems such boat unsafe, to cause the same to be tied up until such owner, master, captain, or pilot shall have complied with the provisions of this act, or until such boat shall have been made safe and seaworthy, as the case may be; and if any such master, owner, captain, or pilot, or any other persons shall release or cause to be released any such boat, he shall be deemed guilty of a misdemeanor.

History: En. Sec. 3, Ch. 63, L. 1913; re-en. Sec. 3861, R. C. M. 1921.

3862. Licenses to boats, captains, and pilots—regulations. The inspector shall report all of his findings to the board of railroad commissioners of the state of Montana, which said commission shall thereupon, if in its opinion said boat shall be seaworthy and safe for the carrying of passengers and freight, issue to such boat a certificate or permit to engage in the business of navigation on any of the navigable waters of the state of Montana, and shall likewise issue licenses to any captain or pilot of said boat, if in its judgment said captain or pilot is qualified for the duties imposed upon him by the provisions of this act; and said commission shall issue all rules and regulations that may be in its judgment necessary for the safe navigation of all steamboats, all boats propelled by machinery, sailboats, ferry-boats

and barges, including pleasure crafts propelled by machinery navigating on any of the navigable waters of this state.

History: En. Sec. 4, Ch. 63, L. 1913; re-en. Sec. 3862, R. C. M. 1921.

3863. Number of passengers limited to number specified in certificate.

No greater number of passengers shall be transported upon licensed boat, steamboat, or other boat propelled by machinery, or sailing-boat, or ferry-boat or barge, than the number allowed in the certificate to such boat, vessel, steamboat, or other boat propelled by machinery, or sailing-boat, ferry-boat or barge, and any captain, pilot, owner, or engineer of such boat, who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and shall be punished accordingly, and shall have (at the discretion of the board of railroad commissioners) his license revoked.

History: En. Sec. 5, Ch. 63, L. 1913; re-en. Sec. 3863, R. C. M. 1921.

3864. Fire protection in boats. All steamboats to which this act shall apply shall be so constructed that all woodwork about the boiler, smoke-stack, fire-boxes, chimneys, cook-houses, stoves, and stove pipes exposed to ignition shall be so shielded by some incombustible material that the air shall circulate freely between such material and woodwork or other ignitable substance, and before granting the certificate of inspection the board of railroad commissioners shall require that all necessary provisions be made as it may deem expedient to guard against loss or damage by fire.

History: En. Sec. 6, Ch. 63, L. 1913; re-en. Sec. 3864, R. C. M. 1921.

3865. Rules of navigation. The following rules shall be observed in navigating steam vessels, steamboats, and all other boats propelled by machinery, and sailing crafts on any of the navigable waters of the state of Montana affected by the provisions of this act.

Rule 1. All steamboats or other boats propelled by machinery shall be equipped with either steam or compressed-air whistles.

Rule 2. When two boats are meeting, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

Rule 3. When two boats are crossing so as to involve risk of collision, the boat which has the other on her starboard shall keep out of the way of the other.

Rule 4. When a steamboat or boat propelled by machinery and sailing boat are proceeding in the same direction, so as to involve risk of collision, the boat propelled by machinery shall keep out of the way of the sailing craft.

Rule 5. When, by any of these rules one of the two of the vessels is to keep out of the way, the other shall keep her course and speed.

Rule 6. Every boat propelled by machinery under way and approaching another boat or vessel of any kind so as to involve a risk of collision, shall slacken her speed, or, if necessary, shall stop and reverse her engine, and every boat propelled by machinery shall, when in a fog, go at a moderate speed.

Rule 7. Any boat propelled by machinery overtaking another boat propelled by machinery shall keep out of the way of the last-named boat.

Rule 8. When two boats propelled by machinery are going in the same direction, and the stern boat wishes to pass the other, she shall signal the forward boat of her intention to pass on the port side, by two distinct whistles, and to pass on her starboard side by one distinct whistle, which shall be answered by the forward boat by the same number of whistles, and the forward boat shall keep on her course as if no signal had been given.

Rule 9. When two steamboats or other boats propelled by machinery are approaching each other, and if the course of such boats is so far on the starboard side of each other as not to be considered by the pilot as meeting end on or nearly so, or, if such boats are approaching each other in such a manner that passing is not as in rule 2, being deemed unsafe, the pilot of one boat shall give two short and distinct blasts of his whistle, which the pilot of the other boat shall answer by two blasts of his whistle, and they shall pass to the left (on the starboard side) of each other.

Rule 10. Steamboats or other boats propelled by machinery approaching each other at not less than three hundred yards distance from each other shall give a signal with one loud distinct whistle.

Rule 11. When two steamboats or other boats propelled by machinery are approaching each other, and the pilot of either boat fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short blasts of his whistle, and if the boats shall have approached within five hundred yards of each other, both shall immediately slow up to a speed barely sufficient for steering, or until the proper signals are given, answered, and understood, or until the boats have passed each other.

Rule 12. When a steamboat or other boat propelled by machinery is in a fog or is in thick weather, it shall be the duty of the pilot to cause a long blast of the whistle to be sounded at intervals of not to exceed one minute.

Rule 13. Signals of distress shall be four blasts of the whistle, and shall be recognized by the master of any steamboat or other boat propelled by machinery hearing the same, and he shall render such assistance as in his power.

Rule 14. Any steamboat or other boat propelled by machinery landing at a wharf or dock shall have the right to such wharf or dock for a period of five minutes. If detained at the wharf or dock for a longer period than five minutes, the steamboat or other boat propelled by machinery already at the wharf shall allow another steamboat or other boat propelled by machinery to land alongside and discharge her passengers and freight over her deck for at least ten minutes, and thereafter until the first steamboat or other boat propelled by machinery shall leave said wharf or dock.

Rule 15. In the construing of these provisions, due regard must be had for all of the dangers of navigation, and to any special circumstances, which may render a departure therefrom necessary in order to avoid immediate danger.

Rule. 16. Every steamboat or other boat propelled by machinery which is under sail and not under steam is to be considered a sailing vessel, and any or every vessel under steam or propelled by machinery, whether under sail or not, is to be considered a steam vessel.

Rule 17. All steamboats or other boats propelled by machinery licensed under the provisions of this act or article shall conform to and obey such other rules and regulations, not inconsistent herewith, as the board of railroad commissioners may direct.

Rule 18. Every steamboat or other boat propelled by machinery on the navigable waters within the jurisdiction of this state shall have two copies of this section framed; one to be posted in the pilot-house, and the other to be hung in a conspicuous place on the vessel for the inspection of passengers.

History: En. Sec. 7, Ch. 63, L. 1913; re-en. Sec. 3865, R. C. M. 1921.

3866. Lights to be carried by boats. The master or pilot in charge of the steamboat, or other boat propelled by machinery, or sailing craft, when navigating any of the water of this state, shall between sunset and sunrise cause said boats to carry the following lights: First, at the foremost head, a bright white light of such a character as to be visible on a dark night, in a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an area of the horizon to twenty points of the compass, and to be fixed as to show the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side; second, on the starboard side, a green light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and be so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; third, on the port side, a red light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft to the beam on the port side. The red and green lights shall be fixed with screens so as to prevent them from being seen from the rear.

History: En. Sec. 9, Ch. 63, L. 1913; re-en. Sec. 3866, R. C. M. 1921.

3867. Force pumps to be carried. Every steamboat or other boat propelled by machinery, other than private pleasure boats, shall be provided with a force pump or an equivalent apparatus for throwing water, and the same shall be at all times, during the navigation of such boat, kept ready for use. Such pump shall be of suitable size and construction to use either in extinguishing fires or pumping water out of the boat, and shall be approved by the board of railroad commissioners.

History: En. Sec. 10, Ch. 63, L. 1913; re-en. Sec. 3867, R. C. M. 1921.

3868. Life and other boats to be carried—practice drills. Every steamboat or other boat propelled by machinery, and sailing craft or ferry-boat affected by the provisions of this act, shall carry on its deck, hung

from davits, such life-boats or other boats as shall be ordered by the board of railroad commissioners. And every captain shall order and hold a practice drill for the lowering of life-boats, and fire-drill at least once every month, and shall keep a record of all such drills, which record shall be kept in a convenient place on such boat, and shall at all times be subject to inspection by the public.

History: En. Sec. 11, Ch. 63, L. 1913; re-en. Sec. 3868, R. C. M. 1921.

3869. Life-preservers. Every steamboat or other boat affected by this act shall have a life-preserver for each passenger, and she shall also carry one for each of her crew. Such life-preserver shall be made of good, sound cork blocks, easily adjusted to the body with belts and straps, properly attached, and so constructed as to pass the cork under the shoulders and around the body of the person wearing the same. Each life-preserver shall contain at least six pounds of good cork, having a buoyancy of at least four pounds to each pound of cork. It shall be the duty of the inspector to satisfactorily ascertain that every life-preserver is as herein required. All such life-preservers shall be kept in a convenient place, accessible in case of accident, in readiness for immediate use, and the place where same are kept shall be designated in the certificate issued by the board of railroad commissioners, and pointed out by printed notices posted in such places as the board of railroad commissioners may direct.

History: En. Sec. 12, Ch. 63, L. 1913; re-en. Sec. 3869, R. C. M. 1921.

3870. Inspection by state boiler inspector. The state boiler inspector shall inspect all steam-boilers in each of the steamboats within the state.

History: En. Sec. 13, Ch. 63, L. 1913; re-en. Sec. 3870, R. C. M. 1921.

3871. Printing of name on boat. Every steamboat or other boat propelled by machinery or sailing craft, subject to the provisions of this act, shall have her name printed on her stern, in either black, yellow, or red letters, of not less than three inches in length.

History: En. Sec. 14, Ch. 63, L. 1913; re-en. Sec. 3871, R. C. M. 1921.

3872. Loss of services of licensed officer—duty of railroad commissioners. If any boat subject to the provisions of this act shall be deprived of the services of any licensed officer without the consent, fault, or collusion of the master, owner, or person interested in such boats, the board of railroad commissioners shall be notified and the deficiency may be temporarily supplied until the services of a licensed officer can be obtained.

History: En. Sec. 15, Ch. 63, L. 1913; re-en. Sec. 3872, R. C. M. 1921.

3873. Inspection fees. The owner of every steamboat or other boat propelled by machinery, sailing-boat, ferry-boat or barge, subject to the provisions of this act, shall pay the board of railroad commissioners, for the use and benefit of the state, an inspection fee on such boats, as follows, to-wit: For each boat under ten tons burden, ten dollars; for each boat over ten tons burden and under twenty tons burden, fifteen dollars; for each boat over twenty tons and under fifty tons burden, twenty dollars; for each boat over fifty tons and under one hundred tons burden, twenty-five dollars; and all over a hundred tons burden, thirty dollars. For each ferry-boat, ten dollars; and for each barge, ten dollars.

History: En. Sec. 16, Ch. 63, L. 1913; re-en. Sec. 3873, R. C. M. 1921.

3874. License fees. For every license granted under the provisions of this act, there shall be charged and collected from the person receiving such license, for the use and benefit of the state, the sum of five dollars, which said license shall remain in full force for one year from the date thereof.

History: En. Sec. 17, Ch. 63, L. 1913; re-en. Sec. 3874, R. C. M. 1921.

3875. Inspectors not allowed additional compensation—use of moneys from licenses and fees. Inspectors of boilers shall not be entitled to any additional compensation for services performed by them as inspectors of water craft. The fees for such inspection shall be paid at the time of the inspection. All fees for licenses shall accompany the application for such license, and in case such license is not issued, the fees shall be returned to the applicant. All fees must be accounted for and paid over to the state treasurer for use of general fund.

History: En. Sec. 18, Ch. 63, L. 1913; re-en. Sec. 3875, R. C. M. 1921; amd. Sec. 1, Ch. 105, L. 1923.

3876. Powers and duties of railroad commissioners. It is hereby made the duty of the board of railroad commissioners to enforce the provisions of this act, and said board of railroad commissioners shall have the jurisdiction to make all needful rules providing for the safety of all passengers, crews, and freight traveling or being transported upon the navigable waters of this state, provided that such rules are within the provisions of this act.

History: En. Sec. 19, Ch. 63, L. 1913; re-en. Sec. 3876, R. C. M. 1921.

3877. Operation of boats without complying with law. It shall be unlawful for any person or persons to operate any steamboat or other boat propelled by machinery, sailing craft, or ferry-boat, or engage in the business of the navigation of boats, without first complying with the provisions of this act.

History: En. Sec. 20, Ch. 63, L. 1913; re-en. Sec. 3877, R. C. M. 1921.

3878. Penalty for violation of act. Any persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in any sum not less than twenty-five dollars, nor more than three hundred dollars, or imprisoned in the county jail not exceeding six months; and in addition thereto the board of railroad commissioners may revoke or suspend the license of any captain or pilot of any boat navigating in violation of the provisions of this act.

History: En. Sec. 21, Ch. 63, L. 1913; re-en. Sec. 3878, R. C. M. 1291.

CHAPTER 313

REGULATION OF PUBLIC UTILITIES—PUBLIC SERVICE COMMISSION

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3879. Creation of public service commission. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R. C. M. 1921.

Constitutionality

Sections 3879 et seq., creating a public service commission and defining its powers, are constitutional. *Public Service Commission v. City of Helena*, 52 M 527, 159 P 24.

Id. Regulations made by the public service commission must be reasonable in order to be valid, and any regulation which imposes upon a city an obligation which is invalid is not reasonable.

Id. The act conferring authority upon the public service commission must be construed in harmony with the theory of self-government in cities, and the retention of police power by the state.

Inasmuch as a franchise contract made in 1912 between a city and a gas company must be presumed to have been entered into with knowledge that the state could thereafter enact legislation toward exercising the power of rate regulation reposed in it, and thus change the rates fixed by the contract, this act is not open to attack on the ground that it impairs the obligation of the contract made the year before. *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 111, 173 P 799.

See also *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 207, 293 P 294, for

discussion of constitutionality of the public service commission act.

Operation and Effect

In the enactment of this law the legislature intended to provide a comprehensive and uniform system of regulation and control of public utilities, by a specially created tribunal, through which the state itself exercises its sovereign power. *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 112, 173 P 799.

The public service commission is a creature of, and clothed with only such powers as are clearly conferred upon it, by the statute to which it owes its being. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 207, 293 P 294.

An ordinance granting a public utility franchise after the enactment of the public service commission law is not invalid merely for the reason that such act vests exclusive jurisdiction in the commission, but is valid until the commission sees fit to act; until then the rate of compensation payable by the company is valid and binding. *City of Baker v. Montana Petroleum Co.*, 99 M 465, 44 P 2d 735.

Powers of Commission

The legislature in enacting the public service commission act intended not only to empower the commission to regulate charges or fix rates, but also to see to it

that reasonable service is rendered by the utility and that its equipment is reasonably adequate. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 207, 293 P 294.

Id. Held, that the public service commission, under its power to regulate a public utility is clothed with authority not only to fix maximum, but also minimum or precise rates.

Public Utilities Defined

Held, that an irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act, and is therefore not subject to supervision and regulation by the public service commission. (Mr. Chief

Justice Brantly and Mr. Justice Galen dissenting.) *State v. Boyle et al.*, 62 M 97, 204 P 378.

When one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to control by the public for the common good to the extent of the interest he has thus created. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 207, 293 P 294.

References

Doney v. Northern Pacific Ry. Co. et al., 60 M 209, 237, 199 P 432; *Billings Utility Co. v. Public Service Com.*, 62 M 21, 29, 203 P 366; *City of Billings v. Public Service Com.*, 67 M 29, 35, 214 P 608.

3880. Railroad commissioners as ex-officio commission. The board of railroad commissioners of the state of Montana shall be ex-officio the public service commission hereby created, and for the purposes of this act shall be known and styled "Public Service Commission of Montana." It shall provide itself with a seal bearing these words, by which its official acts shall be authenticated in all cases where a seal is required; and in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the railroad commission.

History: En. Sec. 2, Ch. 52, L. 1913; re-en. Sec. 3880, R. C. M. 1921.

3881. "Public utility" defined. The term "public utility," within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street-railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns and villages, or elsewhere, telegraph or telephone service; and the public service commission is hereby invested with full power of supervision, regulation, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R. C. M. 1921.

Intent of Act

It was the intention of the legislature to go no further than to provide that, within the limited sphere of its jurisdiction, the public service commission may make reasonable regulations which the city must heed, and to that extent only is

the authority of the city superseded. It was not intended to take from the city the active management of its water plant, or the authority to appoint the proper officers and employees to operate it, or to interfere with such officers in the proper discharge of their duties. *Public Service Commission v. City of Helena*, 52 M 527, 541, 159 P 24.

Public Utilities Defined

Held, that an irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act and is therefore not subject to supervision and regulation by the public service commission. (Mr. Chief Justice Brantly and Mr. Justice Galen dissenting.) *State v. Boyle et al.*, 62 M 97, 204 P 378.

Held, under the rule that where one corporation acquires and holds all of the stock of another corporation, save a share each held by directors for the purpose of preserving the corporate organization of the latter the two corporations in effect become merged, and the holding company will be deemed to own and control the other, that where a foreign corporation licensed to do business in Montana conveyed natural gas by pipe-line from a neighboring state into this state and fur-

nished it to a domestic corporation whose entire capital stock with the exception of five of its 2,500 shares it owned, for distribution to its customers, was a public utility within the meaning of this section, and as such subject to the jurisdiction of the public service commission of Montana and therefore required to furnish such commission annual reports of its operations. *Gallatin N. G. Co. v. Public Service Com.*, 79 M 269, 275, 256 P 373.

References

Cited or applied as section 3, laws of 1913, chapter 52, in *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 107, 173 P 799; *Doney v. Northern Pacific Ry. Co.*, et al., 60 M 209, 237, 199 P 432; *Billings Utility Co. v. Public Service Com.*, 62 M 21, 29, 203 P 366; *City of Billings v. Public Service Com.*, 67 M 29, 35, 214 P 608; *Great Northern U. Co. v. Public Service Com.*, 88 M 180, 207, 293 P 294.

3882. Power to prescribe rules of procedure—judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test, in a court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

History: En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R. C. M. 1921.

3883. Public utilities to furnish service for reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph, or telephone service, produced, transmitted, delivered, or furnished, or for any service to be rendered as or in connection with any public utility, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R. C. M. 1921.

References

Cited or applied as section 5, laws of

1913, chapter 52, in *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 107, 173 P 799; *Great Northern U. Co. v. Public Service Com.*, 88 M 180, 293 P 294.

3884. Power of commission to ascertain property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R. C. M. 1921.

3885. Books, accounts, and records of public utilities. Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

Every public utility engaged directly or indirectly in any other business than those mentioned in section 3881 of this code shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers, and records of such other business.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility.

No public utility shall keep any other books, accounts, papers, or records of the business transacted, than those prescribed or approved by the commission. Each public utility shall have an office in one of the towns, villages, or cities in this state, in which its property, or some part thereof, is located, and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records, required by the commission to be kept within the state, shall at any time be removed from the state, except upon such conditions as may be prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R. C. M. 1921.

3886. Annual report to public service commission. The accounts of such public utilities shall be closed annually on the thirty-first day of December, a balance sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the fifteenth day of March following the closing of the accounts; provided, however, that the accounts of any municipal utility shall be closed annually on the thirtieth day of June, a balance sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the fifteenth day of September following the closing of the accounts. The reports shall be in such form as prescribed by the commission, and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may at any time call for desired information omitted from such reports, or not provided for therein, whenever, in the judgment of the commission, such information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. 3886, R. C. M. 1921; amd. Sec. 1, Ch. 172, L. 1929.

3887. Right to examine books, records, etc. Any commissioner, or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness, and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R. C. M. 1921.

3888. Failure of public utility to make reports or permit examinations. Any officer, agent, or person in charge of the books, accounts, records, and papers, or any of them, of any public utility, who shall refuse or fail, for a period of thirty days, to furnish the commission with any report required

by the provisions of this act, and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility, who shall refuse to permit any commissioner or other person duly authorized by the commission, to inspect such books, accounts, records, or papers on behalf of the commission, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent, or person in charge, shall be deemed a separate offense, and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R. C. M. 1921.

References

City of Billings v. Public Service Com., 67 M 29, 37, 214 P 608.

3889. Records and reports of commission. The commission shall make and publish annual reports for each calendar year, showing its proceedings, which reports shall, as nearly as may be, conform in a general way to those of the railroad commission of the state, and be made at the same time. All the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the public at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R. C. M. 1921.

3890. Commercial units of product or service—standard of measurement—examination and testing. The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this act.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall establish and declare reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, which fees, however, shall be paid by the public utility and repaid to the complaining party, if the quality or quantity of the product, or the character of the service, be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

The commission may, in its discretion, purchase such materials, appa-

ratus, and standard measuring instruments for such examinations and tests as it may deem necessary.

The commission, its agents, experts, or examiners, shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this act, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made, as herein provided, shall be subject to the penalties prescribed in section 3888 of this code.

History: En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R. C. M. 1921.

3891. Schedules of rates, tolls, and charges. Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided, that the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made; provided, however, that no advance or reduction of existing schedules shall be made without the concurrence of the commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of public utilities as in the case of original schedules. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R. C. M. 1921.

Commission Empowered to Fix Not Only Maximum but Also Minimum or Precise Rates

Held, that the public service commission, under its power to regulate a public

utility (secs. 3879-3913), is clothed with authority not only to fix maximum but also minimum or precise rates. *Great Northern Utilities Co. v. Public Service Commission*, 88 M 180, 293 P 294. See also, *Great Northern Utilities Co. v. Public Service Commission*, 52 F 2d 802.

Judicial Review of Rates

Order fixing utility's minimum rate so high as to repel patronage and destroy utility's investment may be judicially annulled. (Const. amend. 14). *Great Northern Utilities Co. v. Public Service Commission*, 52 F 2d 802.

Id. Public service commission order fixing minimum gas rates held unreasonable, where utility sought to lower rates for purpose of self-preservation on account of joint occupancy with rival utility, of a field which could support only one. (Const. amend. 14).

Public Utility May Not Change Schedule of Rates Without Concurrence of Commission

Under the rule that where one must secure leave from someone to entitle him to exercise a right, the irresistible implication is that a discretion is lodged in the

other to refuse to grant it, if in his judgment it is improper or unwise to give the required consent, held, that the contention of a company engaged in furnishing gas to the inhabitants of a city, that after the filing of the initial schedule of rates with the public service commission, the company may change the schedule by the mere filing of a new one and giving the notice required by this section, and that the new schedule becomes effective without the act of concurrence on the part of the commission, may not be sustained. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 293 P 294.

References

Cited or applied as section 11, laws of 1913, chapter 52, in *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 107, 173 P 799; *City of Billings v. Public Service Com.*, 67 M 29, 37, 214 P 608.

3892. Greater or less charges than those prescribed—rebates and privileges. It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 3888 of this code. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R. C. M. 1921.

Operation and Effect

The concluding sentence of this section refers to the sentence immediately preceding, forbidding rebates, concessions etc., and was not intended to except from the operation of the act rate contracts made between cities and public utilities prior to its passage. *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 112, 173 P 799.

Since this section exempts from the operation of the act all "existing contracts" and does not exclude from the provisions of the exempting clause renewals or extensions of such contracts, the renewal or extension of the contract involved in this case was not unlawful. *Helena Light & Ry. Co. v. Northern Pacific Ry. Co.*, 57 M 93, 186 P 702.

Held, that the last sentence in this sec-

tion: "This, however, does not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts," refers to the preceding sentence and not to the entire act, and means that, until changed by the commission, the rates, tolls and charges were to remain as fixed in existing contracts, even though such contracts granted rebates, concessions and special privileges, and that pending change by the commission the public utility was protected from prosecution; overruling the decision in *Helena L. & Ry. Co. v. Northern Pac. Ry. Co.*, 57 M 93, in so far as it conflicts with the above holding. *City of Billings v. Public Service Com.*, 67 M 29, 214 P 608.

References

City of Billings v. Public Service Com., 67 M 29, 35 et seq., 214 P 608; *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 293 P 294.

3893. Classification of service. The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

History: En. Sec. 13, Ch. 52, L. 1907; re-en. Sec. 3893, R. C. M. 1921.

3894. Rules as to inspections—public hearings. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R. C. M. 1921.

3895. Inquiry into and investigation of management of all public utilities. The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs.

Any person, other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

The commission may require, by order or subpoena, to be served on any public utility, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state of Montana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission, or under its direction.

Any public utility failing or refusing to comply with any such order or subpoena, shall be subject to the liability named in section 3888 of this code.

History: En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R. C. M. 1921.

References

Great Northern U. Co. v. Public Ser. Com., 88 M 180, 293 P 294.

3896. Employment of engineer and other help—salary of secretary. The commission is authorized to employ an engineer at a salary of four thousand dollars per annum, also examiners, experts, clerks, accountants, or other assistants as it may deem necessary, at such rates of compensation as it may determine upon; and it is further provided that the secretary of the public service commission shall receive an annual salary of six hundred dollars (\$600), such salary to be in addition to the salary now pro-

vided by law to be paid to the secretary of the board of railroad commissioners of the state of Montana.

History: En. Sec. 16, Ch. 52, L. 1913; amd. Sec. 1, Ch. 188, L. 1919; re-en. Sec. 3896, R. C. M. 1921.

References
State ex rel. Barney v. Hawkins et al., 79 M 506, 524, 257 P 411.

3897. Complaints against public utility—hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing.

The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R. C. M. 1921.

References

Cited or applied as section 17, laws of

1913, chapter 52, in State ex rel. Billings v. Billings Gas Co., 55 M 102, 107, 173 P 799; Great Northern U. Co. v. Public Ser. Com., 88 M 180, 209, 293 P 294.

3898. Subpoena to witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member, or the secretary thereof, may apply to the clerk of the nearest district court, for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court, and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R. C. M. 1921.

3899. Fixing rates and making regulations on hearing—complaint by public utility. If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of this act, the commission shall have the power to fix and order substituted therefor, such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be found that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service, or acts, and make such order relating thereto, as may be just and reasonable.

When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of, and at such times and places as it may prescribe. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices, and service, after a full hearing, as above provided, by order make such changes as may be just and reasonable, the same as if a formal complaint had been made.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society, body politic, or municipal organization, or person or persons. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R. C. M. 1921.

Operation and Effect

Where the public service commission refuses to give its consent to a change of schedule of rates filed by a public utility,

the utility may, under this section make complaint and thereupon a hearing must be held and an order made, the effect of which must be just and reasonable. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 203, 210 P 294.

3900. Depositions of witnesses. The commission, or any party to any proceeding before it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R. C. M. 1921.

3901. Records of proceedings—copies. A full and complete record shall be kept of all proceedings before the commission or its representatives on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided for the bringing of actions against the commission, before the action is reached for trial the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation to be filed with the clerk of the court in which the action is pending.

History: En. Sec. 21, Ch. 52, L. 1913; re-en. Sec. 3901, R. C. M. 1921.

References

Great Northern U. Co. v. Public Ser. Com., 88 M 180, 293 P 294.

3902. Privilege of witnesses—perjury. No person shall be excused from testifying, or from producing books and papers, in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of, or for the reason that, the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R. C. M. 1921.

3903. Refusal of public utility to fill blanks or produce evidence. Any officer, agent, or employee of any public utility who shall wilfully fail or refuse to fill out and return any blanks as required by this act, or shall wilfully fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such questions, or shall evade the answer to such questions, where the fact inquired of is within his knowledge, or who shall, upon proper demand, wilfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper, or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 3888 of this code.

History: En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R. C. M. 1921.

3904. Investigation of violation of law—duty of attorney general and prosecuting attorneys. The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the attorney general; upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 24, Ch. 52, L. 1913; re-en. Sec. 3904, R. C. M. 1921.

3905. Enforcement of rates or charges. All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of the next section. All regulations, practices, and service, prescribed by the commission, shall be enforced and action shall be brought for that purpose, pursuant to the provisions of the next section, or until changed or modified by the commission itself upon satisfactory showing made.

History: En. Sec. 25, Ch. 52, L. 1913; re-en. Sec. 3905, R. C. M. 1921.

Mandamus Lies to Compel Obedience to Orders

In view of the provisions of this and

the next sections, that the rates fixed by the public service commission for a public utility shall remain in full force and effect pending final determination by the courts of a proceeding calling them in question, and the provision of section

3911, specifically authorizing mandamus proceedings to compel obedience to the orders issued, the fact that a proceeding questioning the legality of the rates is pending in court does not bar the commission from applying for a writ of mandate to compel obedience to its order pendente lite. *State v. Great Northern Utilities Co.*, 86 M 442, 446, 284 P 772.

Orders Prima Facie Lawful

Under this act, rates fixed by the public service commission for a public utility furnishing hot-water heat in a city are prima facie lawful, can be attacked in court on the sole ground that they are unlawful or unreasonable, and must be deemed reasonable and just until final determination by the courts, the burden of proof resting upon the party attacking the order of the commission. *Billings Utility Co. v. Public Service Com.*, 62 M 21, 29, 203 P 366.

The orders of the public service commission are by this section made prima facie lawful until changed or modified. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 202, 293 P 294.

Power of State

The establishment of a rate is a legislative, and not a judicial, act, and the power of the courts is circumscribed and restrained so far as interference with determinations reached within the scope of legislative authority is concerned. *Billings Utility Co. v. Public Service Com.*, 62 M 21, 29, 203 P 366.

A municipality and a party to whom it grants a franchise to construct and oper-

ate a public heating plant enter into the contract with the knowledge that while the municipality may contract respecting rates, the state may at any time thereafter in furtherance of the public welfare exercise its inherent power of rate regulation and control. *City of Billings v. Public Service Com.*, 67 M 29, 35, 214 P 608.

Power to Change Rates

The act creating the public service commission confers upon the commission the power, within the lawful exercise of its authority, to change the rates, tolls and charges in public utility contracts, even though they existed prior to the passage of the act. *City of Billings v. Public Service Com.*, 67 M 29, 35, 214 P 608.

The legislature in enacting the public service commission act intended not only to empower the commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. *Great Northern U. Co. v. Public Ser. Com.*, 88 M 180, 202, 293 P 294.

Id. Held, that the public service commission, under its power to regulate a public utility (secs. 3879-3913), is clothed with authority not only to fix maximum, but also minimum or precise rates.

References

Doney v. Northern Pac. Ry. Co. et al., 60 M 209, 237, 199 P 432.

3906. Action to set aside rates or charges fixed by commission. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to said commission.

No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; provided, that all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.

If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

In all actions under this act, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R. C. M. 1921.

References

Doney v. Northern Pacific Ry. Co. et al., 60 M 209, 237, 199 P 432; Billings Utility Co. v. Public Service Com., 62 M

21, 29, 203 P 366; City of Billings v. Public Service Com., 67 M 29, 35, 214 P 608; State v. Great Northern Utilities Co., 86 M 442, 284 P 772; Great Northern U. Co. v. Public Ser. Com., 88 M 180, 202, 293 P 294.

3907. Investigation of accidents—report as to accident. The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon. The testimony taken at such hearing shall be transcribed and filed in the office of the commission.

It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident, such as is mentioned above, to report by telegraph, followed by written report, the same to the commission, in which report shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. The commission shall prescribe forms for the purpose of making such written reports. Reports of accidents as referred to in this section shall be included in the commission's annual report to the governor.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R. C. M. 1921.

3908 Public utility violating laws or failing to comply with order. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such public utility shall be subject to the penalty prescribed by section 3888 of this code.

History: En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R. C. M. 1921.

3909. Verification of reports and statements—perjury. Every annual report, record, or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R. C. M. 1921.

3910. Recovery of forfeitures and penalties. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney general of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission, or other special counsel furnished said commission in any county where such action is pending.

History: En. Sec. 30, Ch. 52, L. 1913; re-en. Sec. 3910, R. C. M. 1921.

3911. Mandamus, injunction, and other remedies. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

History: En. Sec. 31, Ch. 52, L. 1913; re-en. Sec. 3911, R. C. M. 1921.

Operation and Effect

In view of the provisions of sections

3905-3906, that the rates fixed by the public service commission for a public utility shall remain in full force and effect pending final determination by the court of a proceeding calling them

in question, and the provision of this section specifically authorizing mandamus proceedings to compel obedience to the orders issued, the fact that a proceeding questioning the legality of the rates is pending in court does not bar the commission from applying for a writ of mandate to compel obedience to its order

pendente lite. *State v. Great Northern Utilities Co.*, 86 M 442, 446, 284 P 772.

References

Cited or applied as section 31, laws of 1913, chapter 52, in *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 108, 173 P 799.

3912. Traveling expenses of commission. The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R. C. M. 1921.

3913. Effect of invalidity of part of law. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or inoperative for any cause shall not be deemed to affect any other section thereof.

History: En. Sec. 33, Ch. 52, L. 1913; re-en. Sec. 3913, R. C. M. 1921.

CHAPTER 314

PETROLEUM PRODUCTS—SUPERVISION AND REGULATION OF MANUFACTURE AND DISTRIBUTION

Section	3913.1.	Petroleum products dealers license.
	3913.2.	License fees.
	3913.3.	State gasoline inspection fund—payment of expenses.
	3913.4.	Public service commission to enforce act.
	3913.5.	Marking of products according to grades required.
	3913.6.	Gasoline standards—corrosion and distillation range tests.
	3913.7.	Standard for kerosene.
	3913.8.	Grades of tractor or motor fuels—tests.
	3913.9.	Grades of domestic and industrial fuel oil.
	3913.10.	Inspections and tests by public service commission to insure compliance with act.
	3913.11.	Designation of state chemist to make analyses and tests.
	3913.12.	Assistants may make analyses—appointment of assistants.
	3913.13.	Chemist and assistants to give evidence—fees as witnesses.
	3913.14.	Notice to be posted concerning grade of products offered for sale—samples for testing to be furnished.
	3913.15.	Manufacture or sale of low gravity distillates not prevented—labeling required.
	3913.16.	Registration of trade name of product—exclusive use of name by registering party.
	3913.17.	Misrepresentation of product unlawful—revocation of license.
	3913.18.	“Misbranded” defined.
	3913.19.	Samples of product may be taken by commission or user—inspection by commission—interference with inspections—inspectors—compensation.
	3913.20.	Inspection and classification of measuring devices.
	3913.21.	Revocation of license for violations—hearing required.
	3913.22.	Revocation of license of petroleum dealers for unreasonable or discriminatory prices—procedure.
	3913.23.	Effect of partial invalidity of act—construction.
	3913.24.	Penalty for violations.

3913.1. Petroleum products dealers license. All persons, firms, co-partnerships, corporations, trusts or agencies engaged, directly or indirectly, in

the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, or any oil or gas or oil and gas product, lubricating oil and greases, for use in motor vehicles or in internal combustion engines, shall make application to the public service commission of Montana, upon such blank forms as may be provided by said commission for the right to do business in the state of Montana and the making of such application shall be a condition precedent to the right of any such person, firm, co-partnership, corporation, trust or agency to transact any such business within the state of Montana and upon the making and filing of such application and the payment of the proper fee, a license shall issue to the applicant.

Such persons, firms, co-partnerships, corporations, trusts or agencies are hereinafter, for brevity, designated dealers, and the term "dealers" whenever used herein, shall include all persons, firms, co-partnerships, corporations, trusts or agencies described in this section.

History: En. Sec. 1, Ch. 109, L. 1927.

3913.2. License fees. Each dealer shall pay a license fee of one dollar for each separate place of business where such dealer transacts business, and one dollar additional for each gasoline pump or vending machine in excess of one used at such place of business. All licenses shall be annual and expire December thirty-first. Each refinery doing business in the state of Montana shall pay an annual license fee of one dollar.

History: En. Sec. 2, Ch. 109, L. 1927.

3913.3. State gasoline inspection fund—payment of expenses. All fees and receipts taken and received by said commission in the administration of this act shall be transmitted and credited to the state gasoline inspection fund, hereby created, and the state treasurer of the state of Montana shall have the custody of said fund and keep the same separate from any other funds under his control; and all of the expenses incurred in the administration of this act, or in enforcing the terms hereof shall be paid out of said fund in the same manner as other claims against the state of Montana.

History: En. Sec. 3, Ch. 109, L. 1927.

3913.4. Public service commission to enforce act. The public service commission of Montana is hereby required to secure the proper enforcement of this act, to procure for inspection and test and cause to be inspected and tested suitable samples of the commodities enumerated herein, to make all necessary rules and regulations not inconsistent with the terms of this act for the procuring and transmission of said samples and for reporting the results of analyses; to inform the county attorney of the proper county of all cases of violations of this law and to require said county attorney to assist in investigations under the provisions hereof and to ascertain the facts with respect thereto.

History: En. Sec. 4, Ch. 109, L. 1927.

3913.5. Marking of products according to grades required. All of the commodities enumerated herein must be sold under and through names and grades respectively, and such names and grades must be impressed indelibly,

painted or stamped, or otherwise plainly marked upon the barrel, can, car-boy, vessel or other container in which the same are stored, sold, offered or exposed for sale or shipped, respectively, or upon a label conspicuously and securely fastened thereto, giving the true name and grade and content of the product and the name and address of the manufacturer or dealer who sells the same.

It shall be unlawful, in violation of this act to sell or offer or expose for sale any commodities unless the same are properly marked as herein provided and unless the said commodities shall, in all respects, meet the tests and standards herein prescribed. It shall be the duty of every wholesaler of gasoline to furnish with each delivery of gasoline to a retailer, a statement that the said gasoline conforms with the standards by this act prescribed.

History: En. Sec. 5, Ch. 109, L. 1927.

3913.6. Gasoline standards—corrosion and distillation range tests. The standard of quality and strength for gasoline kept for sale or offered for sale within the state of Montana shall be as follows:

The gasoline shall be free from water and suspended matter and the sulphur content shall not be over two-tenths ($2/10$) of one per centum (1%).

Corrosion test: A clean copper strip shall not show more than extremely slight discoloration when submerged in the gasoline for three (3) hours at 122 degrees Fahrenheit.

Distillation range: When ten per centum (10%) has been recovered in the receiver, the thermometer shall not read more than 80 degrees Centigrade (176 degrees Fahrenheit), nor less than 50 degrees Centigrade (122 degrees Fahrenheit); provided that for each per centum distillation loss less than four per centum (4%), the minimum ten per centum (10%) temperature requirements shall be lowered 3 degrees Centigrade (5.4 degrees Fahrenheit).

When fifty per centum (50%) has been recovered in the receiver, the thermometer shall not read more than 140 degrees Centigrade (284 degrees Fahrenheit).

When ninety per centum (90%) has been recovered in the receiver, the thermometer shall not read more than 200 degrees Centigrade (392 degrees Fahrenheit).

The endpoint shall not be higher than 225 degrees Centigrade (437 degrees Fahrenheit).

At least ninety-five per centum (95%) shall be recovered as distillate in the receiver from the distillation.

History: En. Sec. 6, Ch. 109, L. 1927; amd. Sec. 1, Ch. 192, L. 1931.

3913.7. Standard for kerosene. The standards of quality, purity, and strength for all kerosene kept, offered or exposed for sale within the state of Montana shall be as follows: The flash-point of all kerosene shall not be less than one hundred ten degrees Fahrenheit, measured in the Tagliabue open cup, and said kerosene shall contain no water or other foreign matter.

History: En. Sec. 7, Ch. 109, L. 1927.

3913.8. Grades of tractor or motor fuels—tests. All products sold under the titles “tractor fuels,” “motor fuel,” etc., shall be sold under the following grades, same to be designated as “treated” or “untreated” and invoice so show.

Grade A.

The oil shall be free from water, glue and suspended matter.

Gravity—Fuel under this class shall be 42° to 46° Baume gravity.

Distillation—End point shall not be higher than 550°F.

Grade B.

The oil shall be free from water, glue and suspended matter.

Gravity—Fuel sold under this class shall be 40° to 42° Baume gravity.

Distillation—End point shall not be higher than 575°F.

Grade C.

Oil shall be free from water, glue and suspended matter.

Gravity—Fuel sold under this class shall be 36° to 40° Baume gravity.

Distillation—End point shall not be higher than 600°F.

Grade D.

Fuels sold under this class shall be treated or untreated distillate not coming within above grades, but refiner or distributor shall state on invoice the character of the product covered by the invoice and a copy of the invoice shall be delivered to the purchaser.

Treated. Tractor fuel and motor fuels having a sulphur content not to exceed four-tenths of one per cent and meeting the following corrosion test shall be designated as treated:

Corrosion test. A clean copper strip shall not show more than slight discoloration when submerged in the fuel for three hours at 122°F.

Untreated-tractor fuels having a sulphur content of more than four-tenths of one per cent or not meeting the above corrosion test shall be designated as untreated.

History: En. as Sec. 7a, by Sec. 1, Ch. 110, L. 1931.

3913.9. Grades of domestic and industrial fuel oil. The standards of quality and purity of domestic and industrial fuel oil, kept, offered or exposed for sale within the state of Montana, shall be as follows:

Domestic fuel oil, grade 1, shall be light distillate for use in burners, and shall have a flash point not lower than 150 degrees Fahrenheit and not higher than 170 degrees Fahrenheit, measured by the “Tag open cup method.” When ten per centum has been recovered in the receiver the thermometer shall not read more than 420 degrees Fahrenheit, and the end point shall not be higher than 600 degrees Fahrenheit. Water and sediment shall not exceed .05 per cent.

The pour point shall be 30 degrees Fahrenheit.

Domestic fuel oil, grade 2, shall be a medium distillate oil for use in burners, and shall have a flash point not lower than 150 degrees Fahrenheit, nor more than 200 degrees Fahrenheit, measured by the “Tag open cup method.” When ten per centum has been recovered in the receiver the thermometer shall not read more than 460 degrees Fahrenheit, and when ninety per centum has been recovered in the receiver the thermometer shall

not read more than 620 degrees Fahrenheit, water and sediment shall not exceed .05 per cent.

The pour point shall be 30 degrees Fahrenheit.

Domestic fuel oil, grade 3, shall be a heavy distillate fuel oil, and shall have a flash point not lower than 150 degrees Fahrenheit, nor higher than 225 degrees Fahrenheit, measured by the "Tag open cup method." When ten per centum has been recovered in the receiver the thermometer shall not read more than 460 degrees Fahrenheit, and when ninety per centum has been recovered in the receiver the thermometer shall not read more than 675 degrees Fahrenheit. The viscosity shall not be greater than 55 seconds at 100 degrees Fahrenheit, using method 30.41 in the United States Fuel Mines Technical Paper 323-B. Water and sediment shall not exceed .01 per cent.

Pour point shall be 30 degrees Fahrenheit.

Fuel oil, grade 4, shall be a fuel oil for domestic heating or industrial purposes, and shall have a flash point not lower than 150 degrees Fahrenheit, measured by the "Tag open cup method." The viscosity shall not be greater than 125 seconds at Saybolt 100 degrees Fahrenheit, using method 30.41 in United States Bureau of Mines Technical Paper 323-B.

History: En. as Sec. 7b, by Sec. 1, Ch. 110, L. 1933.

3913.10. Inspections and tests by public service commission to insure compliance with act. The public service commission is hereby empowered to make and cause to be made, such inspections as may be necessary to secure compliance with this act and the safe handling and use of the commodities enumerated herein.

Specifically, such tests shall cover and be applicable to:

(a) Any of the enumerated commodities manufactured or refined in this state and distributed to dealers in this state;

(b) Any of the enumerated commodities shipped into this state from points outside thereof and resold or distributed to dealers for resale or distribution in this state;

(c) Any of the enumerated commodities exposed or offered for sale in this state.

Any gasoline, petroleum or distillate shipped into this state for the use by shipper or consignee in any place where the same is or may be dangerous to human life or public safety shall be subject to test and inspection by the public service commission as in this act provided.

History: En. Sec. 8, Ch. 109, L. 1927.

3913.11. Designation of state chemist to make analyses and tests. The head or chairman of the department of chemistry of the state college of agriculture and mechanic arts of the state of Montana is hereby designated as state chemist, and is authorized, and it shall be his duty, to make all analyses and tests of articles inspected under the terms of this act, and to employ in such analyses and tests the standard methods of analysis. The state chemist shall receive no compensation for his services, nor shall he charge any fee for testing or analyzing any samples required to be analyzed by him under the terms of this act; provided, however, that neither the state chemist nor the department of chemistry of the state college of agri-

culture and mechanic arts shall be required to receive for analysis any unofficial samples submitted by any agency other than the public service commission of Montana.

History: En. Sec. 9, Ch. 109, L. 1927.

Operation and Effect

Held, on application for writ of mandate made under this chapter, to compel the head of the department of chemistry of the state college of agriculture and mechanic arts, as state chemist, to make analyses of petroleum products for the public service commission without compensation therefor, that this chapter unambiguously provides that such service shall be rendered without compensation by the chemist or a qualified assistant who is a member of the college staff; that chapter 203, laws of 1919, providing for the inspection of oil products, displaced by this chapter, likewise made it the duty of the chemist to make analyses without compensation, and that therefore recourse may not be had to the erroneous contemporaneous construction of the provisions of both acts by the officers entrusted with the execution of their provisions by allowance of partial compensation, in determining the intention of the legislature in

this regard. *State v. Brannon et al.*, 86 M 200, 203 et seq., 283 P 202.

Id. Held, that under this chapter, the only allowance that may be made out of the gasoline inspection fund by the public service commission for making analyses of petroleum products at the request of the commission, is for laboratory expenses.

Id. Held, that while the primary function of the state university and its units is educational, the legislature may broaden its functions and require, among other things, research and experimental work for the public benefit, or impose additional duties upon its teaching staff as it did by making it the duty of the state chemist, as the head of the department of chemistry of the agricultural college, under this chapter, to make analyses of petroleum products, the welfare of society in general being furthered thereby, and that such requirements are not open to the contention that they are either noneducational or antagonistic to the purposes for which the university was established.

3913.12. Assistants may make analyses—appointment of assistants. All analyses herein directed to be made by the state chemist may, in the discretion of such state chemist, be made by any competent assistant acting under his supervision; provided, however, that such assistant shall be appointed under the rules and regulations of the state board of education.

History: En. Sec. 10, Ch. 109, L. 1927.

3913.13. Chemist and assistants to give evidence—fees as witnesses. It shall be the duty of the state chemist or his assistants to attend and give evidence in all prosecutions instituted for the enforcement of this act, and such chemist or assistant shall receive the same fees and mileage for attendance in such cases as are prescribed by the laws of the state of Montana to be paid to witnesses in courts of record.

History: En. Sec. 11, Ch. 109, L. 1927.

3913.14. Notice to be posted concerning grade of products offered for sale—samples for testing to be furnished. All dealers shall post in at least two conspicuous public places in each and every plant, filling station or distribution agency operated by and through them, a notice to the public, on forms to be prescribed by the public service commission, advising the public in plain terms of the grade and character of commodities offered for sale or sold therein. If such dealers are engaged in selling more than one grade, quality or character of commodity under the description "high test" or "winter gasoline" or "high power gasoline" or "more mileage gasoline," or under any term indicating that the commodity has been specially treated to produce special results and secure particular effects, said

notice shall plainly state the difference in the character, grade or quality of the commodity.

It is hereby made the duty of every dealer subject to the provisions of this act, to submit to the public service commission for transmission by said commission to the state chemist for analysis and report, such quantity of the commodity to be tested as the commission shall require, accompanied by such data with respect thereto as the commission may prescribe and upon the completion of each test required to be made, the state chemist shall certify to the public service commission of Montana, on forms which said chemist and said commission shall prescribe, report of the analysis made by said state chemist, together with any remarks respecting the commodity analyzed.

History: En. Sec. 12, Ch. 109, L. 1927.

3913.15. Manufacture or sale of low gravity distillates not prevented—labeling required. Nothing in this act contained shall prevent the manufacture or sale of engine distillates, power distillates, or kerosene distillates of a lower specific gravity on the Baume scale than gasoline, and which do not conform to the standards of quality, purity, and strength prescribed by this act; provided, however, that the package or other container in or from which the same are sold, or offered for sale, shall be plainly labeled in a conspicuous manner easily visible to the purchaser in such a manner as to indicate the name and character thereof; and the packages, containers and dispensers thereof shall be plainly marked in the manner prescribed by the public service commission.

History: En. Sec. 13, Ch. 109, L. 1927.

3913.16. Registration of trade name of product—exclusive use of name by registering party. Any dealer within the provisions of this act or any other seller or distributor of the commodities named herein, selling or offering for sale under any trade name, designation or description any of the commodities named herein may make application to the public service commission of Montana for registration of said trade name, designation, description or device, and if the same shall, in the judgment of the commission be a fair name, and not confusing to users and buyers of commodities named herein, and if the same shall not conflict with any previously registered name, said commission shall register such name and the same shall be the exclusive property of the dealer so registering the same, and any infringement thereof in public advertisement or competitive salesmanship shall constitute cause for revocation of the license of the infringer after due hearing as in this act provided.

History: En. Sec. 14, Ch. 109, L. 1927.

3913.17. Misrepresentation of product unlawful—revocation of license. It shall be unlawful for any dealer under this act to misrepresent the quality, essential characteristics or brand of any of the enumerated commodities sold by him or to substitute without the knowledge and consent of the purchaser a different quality or brand of commodity than that ordered by such purchaser, and a violation of these requirements shall constitute cause for revocation of license.

History: En. Sec. 15, Ch. 109, L. 1927.

3913.18. “Misbranded” defined. For the purpose of this act, the term “misbranded” shall be construed as follows: All articles, the package or labels of which shall bear any statement, design, or device regarding the same, or regarding ingredients or substances therein, or regarding the properties of such articles, which are false or misleading in any particular whatsoever, shall be deemed misbranded.

History: En. Sec. 16, Ch. 109, L. 1927.

3913.19. Samples of product may be taken by commission or user—inspection by commission—interference with inspections—inspectors—compensation. For the purpose of obtaining information regarding suspected violation of this act, said public service commission or any member thereof, or duly authorized representative shall have access to all places where the commodities enumerated herein are sold, offered for sale or kept for sale, manufactured, transported, or stored, and may take samples therefrom for analyses tendering payment therefor.

Any user or customer shall have the right, upon tendering payment therefor to receive from any dealer, a sample of any commodity sold for purpose of having analysis and test thereof made by the state chemist through the public service commission.

Any member of said commission, or any duly authorized representative thereof shall have the right to inspect any of the commodities enumerated herein, whether the same originate at points without the state or otherwise and whether the same are in transport or at rest in places where they are dangerous to human life or public safety.

Any person obstructing any entry or inspection authorized by this section, or failing upon request to assist therein shall be guilty of a misdemeanor and shall be punished therefor in accordance with law. The public service commission shall employ from time to time such inspectors as said commission shall deem necessary to carry out the provisions of this act, and said commission shall fix the compensation of such inspectors. The inspectors herein provided for shall be paid from the “gasoline inspection fund” provided for in this act and all expenses of carrying out the provisions of this act shall be paid from said fund.

History: En. Sec. 17, Ch. 109, L. 1927.

3913.20. Inspection and classification of measuring devices. The commission shall have power to inspect and classify all meters and measuring, gauging or testing devices and apparatus used in connection with the wholesale or retail distribution of the products enumerated herein, and may prescribe suitable standards of accuracy for such meters and measuring devices, conformable to the standards fixed by the United States bureau of standards for such devices.

History: En. Sec. 18, Ch. 109, L. 1927.

3913.21. Revocation of license for violations—hearing required. If the commission shall find that any dealer operating under this act has violated any of the provisions hereof, or of any lawful order or decision of the commission, promulgated pursuant to the provisions of this act, the commission shall, after due hearing thereon, noticed for not less than ten days, revoke,

cancel, or suspend any license that it has theretofore granted; and such revocation, cancellation or suspension, may be conditioned on such terms as to the commission may seem just and proper.

History: En. Sec. 19, Ch. 109, L. 1927.

3913.22. Revocation of license of petroleum dealers for unreasonable or discriminatory prices—procedure. The public service commission of the state of Montana is hereby vested with authority to revoke the license to engage in the business of selling gasoline and other petroleum products within the state of Montana, issued by such commission to any person, firm, partnership, association or corporation, where such person, firm, partnership, association or corporation is by such commission found guilty of charging an exorbitant or unreasonable price for gasoline sold within the state to residents of the state, or of discriminating between individuals or localities within the state in the prices charged for gasoline, or of discriminating between citizens of this state and citizens of adjoining states, to the disadvantage of the former, in the prices charged for gasoline. Anybody aggrieved by the action of such person, firm, partnership, association or corporation in so charging an exorbitant or unreasonable price for gasoline or in so discriminating between individuals or localities or in so discriminating between citizens of this state and citizens of adjoining states may file written charges with such commission against such person, firm, partnership, association or corporation, and thereupon the commission shall issue a citation to such person, firm, partnership, association or corporation to show cause before the commission within twenty days thereafter why his, their or its license should not be revoked. Such person, firm, partnership, association or corporation may appear by counsel at the hearing and contest the charge. If the charge be established by a preponderance of the evidence the commission shall make an order revoking the license, otherwise the charge shall be dismissed. Within thirty days after the order of revocation is made such person, firm, partnership, association or corporation may appeal therefrom to the district court of the county in which the hearing was had. The appeal must be tried in the district court upon the record made before the commission, but it shall not of itself result in staying the order of revocation. Nothing provided in this act is intended to interfere with or regulate commerce between states, the legislature in passing the same being actuated solely by a desire to protect the citizens of Montana against imposition.

History: En. Sec. 1, Ch. 147, L. 1935.

3913.23. Effect of partial invalidity of act—construction. If any clause, sentence or provision in this act shall be declared invalid, such invalidity shall not affect any other part or parts of this act. Any provision of this act is not intended to nor shall it be construed as modifying or repealing any of the provisions of sections 2420.1 to 2420.11, inclusive of these codes.

History: En. Sec. 2, Ch. 147, L. 1935.

3913.24. Penalty for violations. If any person, firm, co-partnership or corporation coming within the provisions of this act shall violate any of the provisions of this act or shall do any act herein prohibited, or shall fail or

refuse to perform any duty enjoined upon it, for every such violation, failure or refusal such person, firm, co-partnership or corporation, shall, in addition to the forfeiture of license as hereinbefore provided, be for the first offense punished by a fine of not less than ten dollars (\$10.00) and not to exceed one thousand dollars (\$1,000.00), and shall be punished for any subsequent offense by a fine of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000.00), or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

History: En. Sec. 20, Ch. 109, L. 1927.

CHAPTER 315

REGULATION OF PUBLIC MILLS—MONTANA TRADE COMMISSION

- Section 3914. Creation of commission.
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3932. Right of entry upon premises.
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3936. Power to compel production of documentary evidence.
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3939. Investigation of complaints.
3940. Notice of hearing—rights of parties—witness fees and mileage.
3941. Power of commission in disposing of complaints.
3942. Complaints by persons or corporations concerning their own products—notice of hearing—record of proceedings.
3943. Proceedings for the enforcement of law.
3944. Recovery of penalties and forfeitures.
3945. Penalty for violation of law or failure to comply with order.
3946. Traveling expenses of commission.

3914. Creation of commission. A commission is hereby created and established, to be known as the Montana trade commission (hereinafter referred to as the commission), and the board of railroad commissioners of the state of Montana shall be ex-officio the Montana trade commission.

History: En. Sec. 1, Ch. 223, L. 1919; re-en. Sec. 3914, R. C. M. 1921.

3915. Duties of commission. It shall be the duty of the commission hereby created to fix reasonable rules, charges, rates, tolls, maximum profits, and to supervise and regulate the operations of public mills within the

state of Montana, such supervision, control and regulation to be in conformity with this act.

History: En. Sec. 2, Ch. 223, L. 1919; re-en. Sec. 3915, R. C. M. 1921.

3916. Seal—secretary of commission. The commission shall provide itself with a seal which shall be judicially noticed, and by which its official acts shall be authenticated in all cases where a seal is required; and in the name of the commission, as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the Montana trade commission shall be kept entirely separate from that of the board of railroad commissioners.

History: En. Sec. 3, Ch. 223, L. 1919; re-en. Sec. 3916, R. C. M. 1921.

3917. "Public mills" defined. The term "public mills," within the meaning of this act, shall be construed to mean and embrace all persons, co-partnerships, associations, or corporations, their lessees, trustees, or receivers appointed by any court whatsoever, who now or may hereafter own, operate, manage, or control any elevator, mill, factory, or plant or equipment, or any part of a mill or equipment, within the state of Montana, whether operated by steam, electricity, water-power, or any other motive power, or any elevator used in connection therewith, or any kind of equipment used or necessary in the business of milling, manufacturing, or producing flour, bran, mill-feed, or products or commodities of any kind, from wheat, oats, or other grain, and who also is engaged in the business of purchase of wheat and other grain in the open market, and manufacturing same into flour, feed, or other grain products, and selling the same in open markets, and manufacturing flour, feed, or other grain products for farmers and other customers for toll or pay. And the commission is hereby invested with full power of supervision, regulation, and control of such public mills, subject to the provisions of this act.

History: En. Sec. 4, Ch. 223, L. 1919; re-en. Sec. 3917, R. C. M. 1921.

3918. Wheat and other grains to be milled on basis of toll fixed by commission. Every such public mill shall grind and bolt into flour and its equivalent mill products wheat of milling quality when offered by the owner thereof, on a basis of toll to be fixed by the commission; and every such public mill shall grind and chop grains other than wheat when offered by the owner thereof, on a basis of toll to be fixed by the commission; provided, that such mill shall be permitted to return to the person offering such grain for grinding and bolting, or for grinding and chopping, the equivalent value of such grain in flour or other mill products, less the toll in kind allowed to be taken by the commission.

History: En. Sec. 5, Ch. 223, L. 1919; re-en. Sec. 3918, R. C. M. 1921.

3919. Term "public mills" does not include privately owned mills. The term "public mills," as used in this act, shall not be construed to mean and embrace privately owned mills.

History: En. Sec. 6, Ch. 223, L. 1919; re-en. Sec. 3919, R. C. M. 1921.

3920. "Privately owned mill or mills" defined. The term "privately owned mill or mills," as used in this act, shall be construed to mean any

such mill, owned, operated, or used by any person, persons, corporation, or co-partnership, for the purpose of grinding or manufacturing his or its grain for his or its own use or consumption.

History: En. Sec. 7, Ch. 223, L. 1919; re-en. Sec. 3920, R. C. M. 1921.

3921. "Corporation" defined. The term "corporation," as used in this act, shall be construed to mean and embrace any company or association, incorporated or unincorporated, which is engaged in this state in the business of milling, manufacturing, and producing flour, bran, mill-feed, or products or commodities of any kind, from wheat, oats, or other grain.

History: En. Sec. 8, Ch. 223, L. 1919; re-en. Sec. 3921, R. C. M. 1921.

3922. Commission may prescribe rule of procedure—want of judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, or corporation the right to test, in court of competent jurisdiction, the legality or reasonableness of any fixed rule or order, made by the commission in the exercise of its duties or powers.

History: En. Sec. 9, Ch. 223, L. 1919; re-en. Sec. 3922, R. C. M. 1921.

3923. Public mills must furnish adequate service and facilities—reasonableness of tolls. Every such "public mill" which comes within the provisions of this act is required to furnish reasonably adequate service and facilities. The charge of toll made by any such public mill for the grinding, chopping, bolting, rolling, preparation, or manufacture of flour, feed, bran, rolled oats, cereals, breakfast foods, or other mill stuffs or grain products of every kind and nature, or for any service to be rendered to or in connection with any such mill, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 10, Ch. 223, L. 1919; re-en. Sec. 3923, R. C. M. 1921.

3924. Mill may charge a reasonable profit. Every such mill coming within the provisions of this act, the selling or disposing of any of its flour, feed, or other mill stuffs or grain products, shall charge a reasonable profit in addition to the actual cost of its products in the sale thereof to other persons, corporations, or associations.

History: En. Sec. 11, Ch. 223, L. 1919; re-en. Sec. 3924, R. C. M. 1921.

3925. Valuation of plants. The commission may, in its discretion, investigate and ascertain the value of the property of every such "public mill" coming within the provisions of this act, actually used and useful in the milling, manufacture, sale, or production of such grain or grain products. In making such investigation the commission may avail itself of all information contained in the assessment-rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 12, Ch. 223, L. 1919; re-en. Sec. 3925, R. C. M. 1921.

3926. Uniform accounts to be rendered commission. Every public mill, coming within the provisions of this act shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

History: En. Sec. 13, Ch. 223, L. 1919; re-en. Sec. 3926, R. C. M. 1921.

3927. "Documentary evidence" defined. The term "documentary evidence," as used in this act, shall be construed to mean all documents, papers, and correspondence in existence at and after the passage of this act.

History: En. Sec. 14, Ch. 223, L. 1919; re-en. Sec. 3927, R. C. M. 1921.

3928. Copies of documentary evidence—subpoena of witnesses—subpoena duces tecum. For the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person or corporation, coming under the provisions of this act, being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

History: En. Sec. 15, Ch. 223, L. 1919; re-en. Sec. 3928, R. C. M. 1921.

3929. Depositions. The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission, and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

History: En. Sec. 16, Ch. 223, L. 1919; re-en. Sec. 3929, R. C. M. 1921.

3930. Owner or occupant accountable for grain. The owner or occupant of every mill is accountable for the safe-keeping of all grain received in the mill for the purpose of being ground therein, and must deliver the same when ground, or ground and bolted, with the bags or sacks which were delivered in the mill with the grain, to the owner when called for. The bags or sacks must be distinctly marked with the initials or surname of the owner. But the owner or occupant of any mill must not be charged with or made accountable for the loss of any grain, bags, or sacks which may happen by robbery, fire, or other accident, without the fault or neglect of such owner or occupant, or his employee.

History: En. Sec. 2, p. 72, L. 1879; re-en. Sec. 1203, 5th Div. Rev. Stat. 1879; re-en. Sec. 2009, 5th Div. Comp. Stat. 1887; re-en. Sec. 3271, Pol. C. 1895; re-en. Sec. 2093, Rev. C. 1907; re-en. Sec. 3930, R. C. M. 1921.

3931. Penalty. If the owner or occupant, or his employee, takes a greater proportionate quantity of toll than authorized, he is guilty of larceny, and is punishable as provided in the penal code.

History: En. Sec. 3272, Pol. C. 1895; re-en. Sec. 2094, Rev. C. 1907; re-en. Sec. 3931, R. C. M. 1921.

3932. Right of entry upon premises. The commission, its agents, experts, or examiners, shall have the right, authority, and power to enter upon any premises occupied by any public mill coming within the provisions of this act, for the purpose of making the examination, investigation, and tests, from time to time, as the commission may deem necessary, and to set up and use on such premises any appurtenances and appliances, and occupy reasonable space therefor.

History: En. Sec. 17, Ch. 223, L. 1919; re-en. Sec. 3932, R. C. M. 1921.

3933. Schedule of rates, tolls, and charges. Every public mill coming within the provisions of this act shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, charges, and prices which are established, and which are in force at the time, for any service performed, or maximum charges or prices for its products.

History: En. Sec. 18, Ch. 223, L. 1919; re-en. Sec. 3933, R. C. M. 1921.

3934. Rules and regulations for investigations, etc.—rules of procedure. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and regulate the mode and manner of all investigations and hearings of such public mills coming within the provisions of this act. All hearings shall be open to the public.

History: En. Sec. 19, Ch. 223, L. 1919; re-en. Sec. 3934, R. C. M. 1921.

3935. Right to inquire into management of business. The commission shall have power and authority to inquire into the management of the business of all public mills coming within the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any such industry all necessary information to enable the commission to perform its duties.

History: En. Sec. 20, Ch. 223, L. 1919; re-en. Sec. 3935, R. C. M. 1921.

3936. Power to compel production of documentary evidence. The commission may require, by order or subpoena, to be served on any person or corporation coming within the provisions of this act, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any documentary evidence, books, accounts, papers, or records kept by such person or corporation in any office or place within or without the state of Montana, or verified or certified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction.

History: En. Sec. 21, Ch. 223, L. 1919; re-en. Sec. 3936, R. C. M. 1921.

3937. Jurisdiction of district court to enforce obedience to process. Any district court of the state of Montana, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requir-

ing such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

History: En. Sec. 22, Ch. 223, L. 1919; re-en. Sec. 3937, R. C. M. 1921.

3938. Employment of accountant and other help. The commission is authorized to employ an accountant, at a salary of not to exceed three thousand dollars per annum, also examiners, experts, clerks, and accountants or other assistants, as it may be deemed necessary, at such rates of compensation as may be determined upon.

History: En. Sec. 23, Ch. 223, L. 1919; re-en. Sec. 3938, R. C. M. 1921.

References

State ex rel. Barney v. Hawkins et al., 79 M 506, 257 P 411.

3939. Investigation of complaints. Upon a complaint made against any such person or corporation by any mercantile, labor, or agricultural organization, society, or club, or by any person or persons, firm or firms, corporation or corporations, who are directly affected thereby, that any of the rates, tolls, charges, or schedule of maximum profits are in any way unreasonable or unjustly discriminatory, or that any regulations, measures, practices, or acts whatsoever, affecting or relating to the production, manufacture, or preparation or sale of such mill stuffs or grain products, are in any respect unreasonable or insufficient, or that any service in connection therewith is inadequate, the commission shall proceed, with or without notice, to make such investigations as it may deem necessary and proper.

History: En. Sec. 24, Ch. 223, L. 1919; re-en. Sec. 3939, R. C. M. 1921.

3940. Notice of hearing—rights of parties—witness fees and mileage. The commission shall give such persons or corporations and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and such persons or corporations shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of documentary evidence, books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the district courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid, but no fees for mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 25, Ch. 223, L. 1919; re-en. Sec. 3940, R. C. M. 1921.

3941. Power of commission in disposing of complaints. If, upon such hearing and due investigations, the rates, tolls, charges, or profits shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential, or otherwise in violation of the provisions of this act, the commission shall have the power to fix an order substituting therefor such maximum rate or rates, tolls, charges, or schedule of profits as shall be just and reasonable.

History: En. Sec. 26, Ch. 223, L. 1919; re-en. Sec. 3941, R. C. M. 1921.

3942. Complaints by persons or corporations concerning their own products—notice of hearing—record of proceedings. Any person or corporation coming within the provisions of this act may make complaint as to any matter affecting its own product or service, with like effect as though made by any mercantile, agricultural, or labor organization, and the person or persons affected thereby. Notice of the hearing upon any such complaint shall be given to the persons interested in such matter as the commission may by rule prescribe. A full and complete record shall be kept of all proceedings before the commission, or its representatives, on any formal investigation, and all testimony shall be taken down by a stenographer appointed by the commission.

History: En. Sec. 27, Ch. 223, L. 1919; re-en. Sec. 3942, R. C. M. 1921.

3943. Proceedings for the enforcement of law. The commission shall inquire into any neglect or violation of the laws of this state, by any such persons or corporation coming within the provisions of this act, and doing business in the state of Montana, or by the officers, agents, or employees thereof, shall have the power and it shall be its duty to enforce the provisions of this act and report all violations thereof to the attorney general. Upon the request of the commission, it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 28, Ch. 223, L. 1919; re-en. Sec. 3943, R. C. M. 1921.

3944. Recovery of penalties and forfeitures. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney general of the state of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any county attorney selected by said commission in any county where such action is pending.

History: En. Sec. 49, Ch. 223, L. 1919; re-en. Sec. 3944, R. C. M. 1921.

3945. Penalty for violation of law or failure to comply with order. If any person or corporation coming within the provisions of this act shall violate any provisions of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any such person or corporation to place in operation any rate, toll, or profit, or do any act herein prohibited, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such person or corporation shall be subject to a fine of not less than one hundred dollars nor more than five thousand dollars.

History: En. Sec. 30, Ch. 223, L. 1919; re-en. Sec. 3945, R. C. M. 1921.

3946. Traveling expenses of commission. The commission and secretary and such clerks and experts as may be employed shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such

expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 31, Ch. 223, L. 1919; re-en. Sec. 3946, R. C. M. 1921.

3947-4025. Repealed—Chapter 75, laws of 1929.

CHAPTER 316

REGULATION OF STOCK-BROKERS AND INVESTMENT COMPANIES (BLUE SKY LAWS)

- Section 4026. Investment company defined.
 4027. Securities defined.
 4028. Securities to which provisions of act not applicable.
 4029. "Stock-broker" defined.
 4030. Definition of terms "domestic" and "foreign."
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 4032. Permit to do business.
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 4041. Statement of companies and stock-brokers.
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 4044. Circulars and advertisements, conditions covering.
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 4046. Records of commissioners open to inspection.
 4047. Sale or distribution of stocks, bonds, etc.
 4048. False entries or statements—penalty.
 4049. Penalty for violation of act.
 4050. Fees.
 4053. Creation of the office of investment commissioner.

4026. Investment company defined. That name "investment company" as used in this act shall include: All domestic and foreign corporations, whether incorporated or unincorporated, associations, joint stock companies, partnerships, firms, trusts, common law companies, syndicates, pools, or any other form of organization or association, organized or proposed to be organized, except as otherwise provided in this act, who shall sell, attempt to sell, or negotiate for the sale of, or of taking subscriptions for any stock, bonds, units or shares, or debentures, evidence of indebtedness, certificates of interest or participation, certificates of interest in profit sharing agreement, collateral trust certificates, contracts of interest, diversified trustee shares, fixed investment trusts, selected shares corporations, investment contracts, or contracts for the performance of personal services of the furnishing of materials in connection with the burial or cremation of dead human bodies, which contracts are to be performed at a future time determinable only by the death of the person in connection with whose decease said services are to be performed or materials furnished, contracts or agreements or securities of any kind or character, to any person or persons in the state of Montana.

History: En. Sec. 1, Ch. 85, L. 1913;
 re-en. Sec. 4026, R. C. M. 1921; amd. Sec.
 1, Ch. 179, L. 1929; amd. Sec. 1, Ch. 194,
 L. 1931; amd. Sec. 1, Ch. 47, L. 1933.

References

Act cited or applied as chapter 85, laws
 of 1913, p. 367, in *Buhler v. Loftus*, 53
 M 546, 554, 165 P 601.

4027. Securities defined. The term "securities" as used in this act shall be taken to mean shares, bonds, debentures, evidence of indebtedness, certificates of interest or participation, certificates of interest in profit sharing agreement, collateral trust, certificates contracts, diversified trustee shares, fixed investment trusts, selected shares corporations, investment contracts, or contracts for the performance of personal services or the furnishing of materials in connection with the burial or cremation of dead human bodies which contracts are to be performed at a future time determinable only by the death of the person in connection with whose decease said services are to be performed or materials furnished, contracts or agreements or any other instrument commonly known as a security.

History: En. Sec. 1, Ch. 85, L. 1913; re-en. Sec. 4027, R. C. M. 1921; amd. Sec. 2, Ch. 179, L. 1929; amd. Sec. 2, Ch. 194, L. 1931.

4028. Securities to which provisions of act not applicable. The provisions of this act shall not apply to the following securities:

1. Securities of the United States or of any foreign government, with which the United States maintains diplomatic relationship at the time of the sale thereof, or of any state or territory, or of any county, city, township, district or other public taxing subdivision of any state or territory of the United States.

2. Securities of public or quasi-public corporations, the issues of which are regulated by a state officer or board of this state, or by a state officer or board of similar authority, of any state or territory of the United States, or securities senior thereto.

3. Securities of state or national banks or trust companies, or building and loan associations authorized by the superintendent of banks to do business in this state.

4. Policy contracts of insurance companies licensed to do business in this state.

5. Securities of any domestic corporation not organized for profit.

6. Securities of any co-operative association organized in good faith under the laws of this state, exclusively for the purpose of conducting upon the co-operative plan, among its stockholders, any or all of the following business: Any agricultural, dairy, livestock or produce business, the business of selling, marketing or otherwise handling any agricultural, dairy or livestock products, or other produce raised or produced by the stockholders of such association, or by any co-operative association, the manufacture of any products from any agricultural, dairy or livestock products, or other produce, produced by the members of such association, any business incidental to any of the above purposes, the operation of a rural telephone among its stockholders.

7. Securities listed on the New York stock exchange, the Boston stock exchange, the board of trade of the city of Chicago, Chicago stock exchange or the New York curb exchange, which securities have been so listed pursuant to official authorization by such exchange, and all securities senior to any securities so listed or represented by subscription rights which have been so listed or evidence of indebtedness guaranteed by companies, any

stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect.

8. Notes secured by mortgages for real estate located in the state of Montana.

9. Securities sold by the owner for the owner's account exclusively, where the owner is not the issuer or an underwriter thereof, when not made in the course of continued and repeated transactions of a similar nature.

10. Securities of a corporation where the persons holding the same shall not exceed fifty in number.

History: En. Sec. 1, Ch. 85, L. 1913; re-en. Sec. 4028, R. C. M. 1921; amd. Sec. 3, Ch. 179, L. 1929; amd. Sec. 2, Ch. 47, L. 1933.

4029. "Stock-broker" defined. The name "stock-broker" as used in this act shall include every person, set of persons, associations, companies, copartnership, or corporation, who shall, in the state of Montana, engage in the business of dealing in stocks, bonds, or other securities covered by this act, selling or offering or negotiating for the sale thereof, or underwriting or purchasing such securities and reselling them to any person or persons, at a commission or profit.

History: En. Sec. 2, Ch. 85, L. 1913; re-en. Sec. 4029, R. C. M. 1921.

4030. Definition of terms "domestic" and "foreign." The name "domestic" as used in this act shall apply to those investment companies or stock-brokers incorporated under the laws of Montana, or having their principal office in the state of Montana, and the word "foreign" shall apply to those incorporated under the laws of another state or foreign country, or having their principal office outside of the state of Montana.

History: En. Sec. 3, Ch. 85, L. 1913; re-en. Sec. 4030, R. C. M. 1921.

4031. Definition of "agent." The name "agent" as used in this act shall include any person who shall act for any investment company or stock-broker in offering for sale, taking subscriptions for, or negotiating for the sale, or selling any securities for any investment company or stock-broker, either as an employee on a salary basis, or for a commission.

History: En. Sec. 4, Ch. 85, L. 1913; re-en. Sec. 4031, R. C. M. 1921.

4032. Permit to do business. It shall be unlawful for any investment company or stock-broker, or any representative thereof, to sell, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatsoever, of any stocks, bonds, or other securities of any kind or character, other than those exempted from the provisions hereof by the definitions herein provided, without a permit from the state investment commissioner as hereinafter provided.

History: En. Sec. 5, Ch. 85, L. 1913; re-en. Sec. 4032, R. C. M. 1921.

References

State v. Gateway Mortuaries, Inc. et al., 87 M 225, 252, 287 P 156.

4033. Application and fee for permit. Before securing such permit, it shall be necessary for each and every investment company to file in the office of the investment commissioner, together with a filing fee of twenty-five dollars (\$25), the following papers, documents, etc., together with such

other information and documents as said investment commissioner shall deem necessary in each case, to-wit:

1. An itemized statement of its actual financial condition, and the amount of its properties and liabilities;

2. A copy of all contracts, bonds, or other securities which it proposes to make with or sell to its contributors;

3. Sample copies of all literature or advertising matter used or to be used by such investment company;

4. A copy of its constitution and by-laws or articles of co-partnership or association;

5. If it shall be an incorporated investment company, it shall also file a copy of its charter, and if it be a foreign investment company, such copy shall bear the certificate of the secretary of state, or other state officer having custody of such records, that it is a true, complete, and correct copy.

6. If the applicant is a foreign investment company, a certificate by the proper officer of its domicile state, territory, or government not more than thirty (30) days before the filing of such application, showing that such applicant is authorized to transact business in such state, territory, or government.

History: En. Sec. 6, Ch. 85, L. 1913; re-en. Sec. 4033, R. C. M. 1921; amd. Sec. 3, Ch. 47, L. 1933.

4034. Verification of papers. All of the above-described papers shall be verified by the oath of a duly authorized member of a copartnership or association, if it be a copartnership or association, and by the oath of the president and secretary, if it be incorporated; provided, that the investment commissioner shall have the power to require such officers to make affidavit to such other reports or information as he may call for.

History: En. Sec. 7, Ch. 85, L. 1913; re-en. Sec. 4034, R. C. M. 1921.

4035. Consent to service of process by foreign companies. Every foreign investment company shall also file its written consent, in such form as may be approved by the investment commissioner, that actions may be commenced against it, in the proper court of any county in this state in which a cause of action may arise, or in which the plaintiff may reside, by the service of process on the investment commissioner, agreeing that such service of process on the investment commissioner shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such written consent for service of process shall be irrevocable. Such written consent shall be accompanied by a certified copy of an order or resolution of the board of directors, trustees, owners, or managers of such investment company, authorizing the execution of same. When a case shall be brought, the summons shall be directed to the investment commissioner, and shall require the defendant to answer by a certain day, not less than forty days nor more than sixty days from the date thereof. Said summons shall be forthwith forwarded by the clerk of the court to the investment commissioner, who shall immediately forward a copy thereof to the secretary of the corporation sued, by registered mail, and thereupon the investment commissioner shall make return of said

summons to the court whence it issued, showing the date of its receipt by him, the date of forwarding such copy, the name and address of the person to whom he forwarded said copy, and the costs of service and return thereof, which in each case shall be two dollars and fifty cents. Such return shall be under his hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him. The investment commissioner shall keep a suitable record book, in which he shall docket each action commenced against a foreign investment company as aforesaid. This record shall show the court in which the suit is brought, the title of case, the time when commenced, the date and manner of service, and the date of payment of fee taxed as costs in the case.

History: En. Sec. 8, Ch. 85, L. 1913; re-en. Sec. 4035, R. C. M. 1921.

4036. Examination of papers and issuance of statement—revocation of permit. It shall be the duty of the investment commissioner to examine the statements and documents so filed, and if said investment commissioner shall deem it advisable, he shall make or have made a detailed examination, audit or investigation of such investment company's affairs; providing, that such investment company may at its option, in writing, refuse to have such investigation made, in which event said investment commissioner shall reject its application. If he finds that such investment company is solvent, that its articles or incorporation or association, its constitution and by-laws, its proposed plan of business, and proposed contracts contain and provide for a fair, just and equitable plan for the transaction of business and that its promotion expense shall not be greater than twenty-five per centum (25%) of the sale price of its securities, and in his judgment promises a fair return on the stocks, bonds, or other securities by it offered for sale, the investment commissioner shall issue to such investment company a statement, entitling it to sell such securities in the state of Montana, and reciting that such company has complied with the provisions of this act, that detailed information in regard to the company and its securities is on file in the investment commissioner's office, and that such investment company is permitted to do business in this state; and such statement shall also recite in bold type that the investment commissioner in no wise recommends the securities to be offered for sale by such investment company. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause to him sufficient, but no order revoking such permit shall be entered without a formal hearing. The commissioner shall at least ten (10) days before revoking a permit, send by registered mail to the permittee, a written notice of his intention so to do, specifying therein the reasons for such revocation, the time when and the place where such hearing will be held, at which hearing the permittee shall have the right to appear by counsel, or otherwise, and be fully heard; provided however, that pending said hearing the investment commissioner shall have power to suspend said permit and thereafter the sale or offer for sale of securities by the permittee shall be unlawful. The permittee shall have the right to appeal from any and all final orders entered by the investment commissioner upon the formal hearing so had, which said appeal shall be in the manner and

form as provided in section 4038. But if said investment commissioner finds that such articles of incorporation or association, charter, constitution and by-laws, plan of business, or proposed contract contain any provision that is unfair, unjust, inequitable, or oppressive to any class of contributors, or if he decides from his investigation or examination of its affairs that said investment company is not solvent, or does not intend to do a fair and honest business, or in his judgment does not promise a fair return on the stocks, bonds, or other securities by it offered for sale, then he shall not grant such company a permit as herein provided, and shall notify said company in writing of his decision.

History: En. Sec. 9, Ch. 85, L. 1913; re-en. Sec. 4036, R. C. M. 1921; amd. Sec. 4, Ch. 47, L. 1933.

Constitutionality

This section before its amendment by chapter 47, laws 1933, held invalid as depriving permittee of property without due process of law. *Investors Syndicate v. Porter*, 52 F 2d 189, (Bourquin, J., dis-

senting). Reversed in the supreme court of the United States, 286 U. S. 461, on the ground that the federal court did not have jurisdiction because the administrative remedy provided in the state courts had not been exhausted before seeking an injunction from the federal court. See also the same case on rehearing, 287 U. S. 346, adhering to the decision in 286 U. S. 461.

4037. Granting to stock-brokers of permit to do business. The foregoing sections 4033 to 4036, inclusive, shall apply to stock-brokers, providing that stock-brokers shall not be required to file a copy of each stock, bond, or other security it shall handle, and that said investment commissioner shall make special investigation and ascertain the reputation of such stock-broker, especially as to the class of stocks, bonds, and other securities handled by such broker, and that the granting of a permit to such stock-broker shall be further contingent upon such stock-broker having the reputation of handling such stocks, bonds, and other securities as said investment commissioner shall decide to be a good, legitimate investment. Such permit shall entitle such stock-broker to handle such stocks, bonds, and other securities in the state of Montana as are not objected to by the investment commissioner; providing, that such stock-broker shall file on the first day of each month a list of the stocks, bonds, and other securities on hand for sale, and handled by it during the preceding month; and providing, further, that said investment commissioner shall have authority to prohibit said stock-broker from handling any of such issues at any time, or to cancel said broker's permit at any time he decides that said broker is not handling such securities as he deems good, legitimate investments.

History: En. Sec. 10, Ch. 85, L. 1913; re-en. Sec. 4037, R. C. M. 1921.

4038. Action to vacate findings of commissioner—appeals. Any interested person, who has appeared, co-partnership, association or corporation being dissatisfied with any finding, findings or decision of the commissioner made in accordance with the provisions of this act, may within thirty days from the making thereof, commence an action in any court of competent jurisdiction against said commissioner as defendant, to vacate and set aside said finding, findings or decision, on the ground that the said findings or decision are unjust or unreasonable. The rules of pleading and procedure

in such action shall be the same as are provided by law for the trial of equitable actions in the district courts of this state and on the hearing the judge of said court may set aside, modify or confirm said findings or decision as the evidence and the rules or equity may require. Appeals may be taken from the decision of the district court to the supreme court by either party in the same manner as is provided by law in other civil actions. Pending any such action, the said findings or decision of said commissioner shall be prima facie evidence that they are just and reasonable and that the facts found are true, and pending any such action the said findings or decision of the commissioner shall remain in full force and effect. If no action be brought to set aside said findings or decision within thirty days, the same shall become final and binding.

Provided, however, that the original application with reference to which an appeal is herein provided for shall not be heard by the investment commissioner until notice of hearing on the same has been published in some newspaper published at the capital city daily, in at least seven issues of such paper, and provided further, that upon such hearing on the original application, any person, co-partnership, association or corporation interested in or opposed to said application may appear.

History: En. Sec. 11, Ch. 85, L. 1913; re-en. Sec. 4038, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1931.

Constitutionality

This section held invalid as depriving permittee of property without due process of law. *Investors Syndicate v. Porter*, 52 F 2d 189 (Bourquin, J., dissenting). Re-

versed in the supreme court of the United States, 286 U. S. 461, on the ground that the federal court did not have jurisdiction because the administrative remedy provided in the state courts had not been exhausted before seeking an injunction from a federal court. See also the same case on rehearing, 287 U. S. 346, adhering to the decision in 286 U. S. 461.

4039. Amendment of charter or by-laws—limitations upon companies.

No amendment of the charter, articles of incorporation, constitution, or by-laws of any such investment company shall become operative until a copy of the same has been filed with the investment commissioner as provided in regard to the original filing in section 4033 of this code, nor shall it be lawful for such investment company to transact business on any other plan than that set forth in its application, or to make any contracts other than that shown in copy of proposed contract required under section 4033 of this code, until a written statement showing in full detail the proposed new contract shall have been filed with the investment commissioner, in like manner as provided in regard to the original plan of business and proposed contract, and the consent of the investment commissioner obtained as to making such proposed new plan of business or contract.

History: En. Sec. 12, Ch. 85, L. 1913; re-en. Sec. 4039, R. C. M. 1921.

4040. Registration of agents and permits to do business. Any investment company or stock-broker holding a permit issued by the investment commissioner may appoint one or more agents, but no such agent shall do any business as provided in this act for said investment company or stock-broker in this state until he shall be registered with the investment commissioner as an agent of such investment company or stock-broker, and shall deliver to the investment commissioner a good and sufficient bond in the sum of one thousand dollars (\$1,000), payable to the state of Mon-

tana, to be executed by said agent together with a good and sufficient surety and/or sureties to be approved by the investment commissioner, conditioned upon the faithful compliance with the provisions of law by said agent, and shall provide that upon failure to so comply, the agent shall be liable to any and all persons who may suffer loss by reason thereof, and for each of such registrations there shall be paid to the investment commissioner the sum of five dollars (\$5.00), and said investment commissioner shall issue to each agent so registered an individual permit, entitling him to represent such investment company or stock-broker in the state of Montana as its agent until the first day of March following, when it shall be necessary to re-register such agent, provided that no agent of any stock-broker, company, association or corporation will be granted a permit to represent said stock-broker, company, association or corporation unless he has been a resident of the state of Montana for a period of at least six months next prior to the date of application for said permit, except that an officer of the permitted investment company may employ one manager or supervisor to act as sales manager for such investment company, which said manager or supervisor need not qualify as to residence. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause appearing to him sufficient. The conversion by an agent of securities, or the practice of trading in of securities of any company, commonly known as "twisting" or "high-grading" shall be grounds for having his permit revoked upon hearing.

History: En. Sec. 13, Ch. 85, L. 1913; re-en. Sec. 4040, R. C. M. 1921; amd. Sec. 4, Ch. 179, L. 1929; amd. Sec. 5, Ch. 47, L. 1933.

4041. Statement of companies and stock-brokers. Every investment company, or stock-broker licensed under this act shall file on or before the fifteenth day of March of each year, and such other times as required by the investment commissioner, a statement setting forth, in such form as may be prescribed by said investment commissioner, its financial condition, amount of its properties and liabilities, and such other information concerning its affairs as said investment commissioner may require. Each such statement shall be accompanied by a filing fee in the amount as provided in section 4050. Any investment company or stock-broker failing to file its report as herein provided, or failing to file any special report within thirty (30) days after receipt of request from the investment commissioner therefor, shall forfeit its right to do business in this state by reason thereof.

History: En. Sec. 14, Ch. 85, L. 1913; re-en. Sec. 4041, R. C. M. 1921; amd. Sec. 6, Ch. 47, L. 1933.

4042. Accounts and methods of doing business. The general accounts of every investment company, domestic or foreign, doing business in this state, shall be kept in such manner and form as may be prescribed by the investment commissioner, and all books, papers, business, methods and affairs of such investment company shall be at all times subject to inspection and investigation by said investment commissioner, or any person thereto by said commissioner authorized and designated for the purpose of enforcing the provisions of this act. The investment commissioner shall have the power of a court of general jurisdiction to enforce the attendance

of witnesses and production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state; said commissioner shall have power to take testimony under deposition either within or without the state.

History: En. Sec. 15, Ch. 85, L. 1913; re-en. Sec. 4042, R. C. M. 1921.

4043. Supervisory control and fees of commissioner. The investment commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock-brokers, domestic or foreign, licensed under this act, and all such investment companies or stock-brokers shall be subject to examination by the investment commissioner, or his duly authorized agents or deputies, at any time the investment commissioner may deem it advisable, and in the same manner as is now provided for the examination of state banks. The rights, powers, and privileges of the investment commissioner in connection with such examinations shall be the same as is now provided with reference to the examination of state banks. Such investment company or stock-broker shall pay a fee for each examination made by said investment commissioner, or his deputies or agents, of not to exceed ten dollars for each day or fraction thereof, plus the actual traveling and hotel expenses of said commissioner, or his agent or deputy, that he is absent from the capitol building for the purpose of making such examination, and the failure or refusal of any investment company or stock-broker to pay such fees upon the demand of the investment commissioner, or his deputy or agent, while making such examination, shall work a forfeiture of his or its right to do business in this state.

History: En. Sec. 16, Ch. 85, L. 1913; re-en. Sec. 4043, R. C. M. 1921.

Constitutionality

This section held invalid as depriving permittee of property without due process of law. *Investors Syndicate v. Porter*, 52 F 2d 189 (Bourquin, J., dissenting). Reversed in the supreme court of the United

States, 286 U. S. 461, on the ground that the federal court did not have jurisdiction because the administrative remedy provided in the state courts had not been exhausted before seeking an injunction from a federal court. See also the same case on rehearing, 287 U. S. 346, adhering to the decision in 286 U. S. 461.

4044. Circulars and advertisements, conditions covering. It shall be unlawful for any investment company or stock-broker, or his or its agents, to issue, circulate, or deliver any advertisement, pamphlet, circular, or other securities in the state of Montana, until after such investment company or stock-broker shall have been licensed to sell his or its securities in the state of Montana, as provided in this act, and it shall be unlawful for any such licensed investment company or stock-broker, or his or its agent, to issue, circulate, or deliver any such advertisement, pamphlet, circular, or other document, unless the same shall be signed and bear a serial number and a copy thereof first filed with the investment commissioner and the approval of the investment commissioner obtained thereto; nor shall it be lawful for any investment company or its officers, directors, or agents, or any stock-broker or his agents to use in any newspaper advertisement or other means of advertising the name of the investment department, or the name of the investment commissioner of the state of Montana, or the permit issued to such investment company, stock-broker, or agent for the purpose of making sales; nor shall it be lawful for any investment company, stock-

broker, or agent to use any letter or other matter issued by the investment department or the investment commissioner of the state of Montana for sales purposes; and further, no investment company, stock-broker, or agent shall issue or circulate, or cause to be issued or circulated by speech or otherwise, any estimate, illustration, circular or statement of any sort that is false or wilfully exaggerated, or which is intended to give, or which has a tendency to give an apparent or greater value to the securities or property of said investment company, broker, dealer, or issuer, or misrepresent the terms, conditions, profits or dividends, of any stock, bond, or security which the said investment company, stock-broker, or agent is permitted to sell in the state of Montana.

History: En. Sec. 17, Ch. 85, L. 1913; re-en. Sec. 4044, R. C. M. 1921; amd. Sec. 7, Ch. 47, L. 1933.

4045. Revocation of permits and appointment of receiver. Whenever it shall appear to the investment commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable, or unauthorized manner, or is jeopardizing the interests of its stockholders or the investors in stocks, bonds, or other securities by it offered for sale, or whenever any investment company shall refuse to file any papers, statements, or documents required under this act, or shall refuse to permit an examination by said investment commissioner, or his deputies or agents, as provided in this act, without giving satisfactory reasons therefor, said investment commissioner shall at once cancel its permit and if he shall deem advisable, shall communicate such facts to the attorney general, who shall thereupon at once make an investigation, and if the facts as presented to him by the investment commissioner are substantiated, he shall thereupon apply to a court of competent jurisdiction for the appointment of a receiver to take charge of and conclude the business and affairs of such investment company, and if such fact or facts be made to appear, it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

History: En. Sec. 18, Ch. 85, L. 1913; re-en. Sec. 4045, R. C. M. 1921.

Constitutionality

This section held invalid as depriving permittee of property without due process of law. In *Investors Syndicate v. Porter*, 52 F 2d 189 (Bourquin, J., dissenting). Reversed in the supreme court of the United

States, 286 U. S. 461, on the ground that the federal court did not have jurisdiction because the administrative remedy provided in the state courts had not been exhausted before seeking an injunction from a federal court. See also the same case on rehearing, 287 U. S. 346, adhering to the decision in 286 U. S. 461.

4046. Records of commissioners open to inspection. All papers, documents, and other instruments filed with said investment commissioner under this act shall be subject to inspection of any one affected by this act, upon application therefor, except that the investment commissioner may, in his discretion, withhold any information relating to the affairs of any investment company or stock-broker that, in his judgment, is not required for the best interests of its stockholders and the public welfare.

History: En. Sec. 19, Ch. 85, L. 1913; re-en. Sec. 4046, R. C. M. 1921.

4047. Sale or distribution of stocks, bonds, etc. It shall be unlawful for any investment company, after it has been granted a permit under the provisions of this act, to issue, sell, or distribute any stocks, bonds, or other securities for promotion or for any other causes, or on any other conditions than those set forth in its applications, without first securing the approval of the investment commissioner therefor. Neither shall it be lawful for any investment company, after it has been granted a permit under the provisions of this act, to pay any dividends in stocks, bonds, or other securities, without the approval of the investment commissioner.

History: En. Sec. 20, Ch. 85, L. 1913; re-en. Sec. 4047, R. C. M. 1921.

4048. False entries or statements—penalty. Any person who shall knowingly or wilfully subscribe to, or make or cause to be made, any false statements or false entry in any book of such investment company or stock-broker, or exhibit any false paper with the intention of deceiving any person authorized to examine into its affairs, or who shall make or publish any false or misleading statements of its financial condition, or of the stocks, bonds, or other securities by it offered for sale, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than ten thousand dollars, and shall be imprisoned for not less than one year nor more than ten years in the state penitentiary.

History: En. Sec. 21, Ch. 85, L. 1913; re-en. Sec. 4048, R. C. M. 1921.

4049. Penalty for violation of act. Any person or persons, agent or agents, investment company, or stock-broker, who shall violate any of the provisions of this act, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined for each offense not less than one hundred dollars nor more than ten thousand dollars, or by imprisonment in the state penitentiary for not less than ninety days nor more than one year, or by both such fine and imprisonment.

History: En. Sec. 22, Ch. 85, L. 1913; re-en. Sec. 4049, R. C. M. 1921.

4050. Fees. The following fees shall be paid to the investment commissioner:

a. The fee for filing the original papers of an investment company or stock-broker shall be twenty-five dollars (\$25), as provided by section 4033.

b. The fee for agent's licenses shall be five dollars (\$5.00), as provided by section 4040.

c. The fee for filing the annual statement of an investment company or stock-broker shall be two dollars and fifty cents (\$2.50).

d. For the credit of the general fund, each investment company, domestic or foreign, licensed under this act, and selling the class of securities as defined in section 4027, shall pay to the investment commissioner on or before the first day of July, each year, a fee based upon the total assets of such investment company, as shown by its last annual statement and upon the following rates:

Those having total assets in the amount of fifty thousand dollars (\$50,000), or less, shall pay a fee of twenty-five dollars (\$25).

Those having total assets in the amount of fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000), shall pay a fee of fifty dollars (\$50).

Those having total assets in the amount of one hundred thousand dollars (\$100,000) and less than three hundred thousand dollars (\$300,000), shall pay a fee of seventy-five dollars (\$75).

Those having total assets in the amount of three hundred thousand dollars (\$300,000), and less than six hundred thousand dollars (\$600,000), shall pay a fee of one hundred dollars (\$100).

Those having total assets in the amount of six hundred thousand dollars (\$600,000), and less than one million dollars (\$1,000,000), shall pay a fee of one hundred fifty dollars (\$150).

Those having total assets in the amount of one million dollars (\$1,000,000), and less than two million dollars (\$2,000,000), shall pay a fee of two hundred dollars (\$200).

Those having total assets in the amount of two million dollars (\$2,000,000), and less than five million dollars (\$5,000,000), shall pay a fee of three hundred dollars (\$300).

Those having total assets in the amount of five million dollars (\$5,000,000), or more, shall pay a fee of five hundred dollars (\$500).

e. For the credit of the general fund, each stock-broker, domestic or foreign, licensed under this act, and handling the class of securities as defined in section 4027, shall pay to the investment commissioner a fee in the sum of five dollars (\$5.00) for each and every issue of security or securities as defined in section 4027, handled by such broker.

f. All fees provided for in this act shall be collected by the investment commissioner and, by him, shall be deposited with the state treasurer, for the credit of the general fund.

History: En. Sec. 23, Ch. 85, L. 1913; amd. Sec. 1, Ch. 85, L. 1921; re-en. Sec. 4050, R. C. M. 1921; amd. Sec. 5, Ch. 179, L. 1929; amd. Sec. 8, Ch. 47, L. 1933.

4051-4052. Omitted.

4053. Creation of the office of investment commissioner. The office of investment commissioner is hereby created, and the state auditor of Montana is hereby made and constituted ex-officio investment commissioner.

History: En. Sec. 24, Ch. 85, L. 1913; re-en. Sec. 4053, R. C. M. 1921.

4054-4055. Omitted.

CHAPTER 317

REGULATION OF REAL ESTATE BROKERS

- Section 4056. Office of real estate commissioner created.
 4057. Powers of commissioner.
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 4061. Disposal of fees and collections.
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 4064. Scope of licenses.
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- 4067. Bonds—approval—action upon.
- 4068. Consent to suit by non-resident applicants.
- 4069. Home office of real estate brokers.
- 4070. Suspension or revocation of license.
- 4071. Suspension or revocation—appeal and bond.
- 4072. Power of commissioners concerning oaths, subpoenas, process and witnesses.
- 4073. Complaints for violation of act—duty county attorney.
- 4074. Penalty for acting without license.
- 4075. Proof of license in actions for compensation.
- 4076. Notice termination employment of broker.
- 4077. Mailing list licensed brokers.
- 4078. Effect of partial invalidity of act.

4056. Office of real estate commissioner created. The commissioner of agriculture of the department of agriculture, labor and industry, of the state of Montana, shall be ex-officio real estate commissioner, with no additional compensation and shall be charged with the duty of enforcing the provisions of this chapter, and all other laws of the state, now or hereafter, enacted for the regulation of real estate brokers.

History: En. Sec. 1, Ch. 195, L. 1921;
re-en. Sec. 4056, R. C. M. 1921; amd. Sec.
1, Ch. 40, L. 1925.

References
Piatt & Heath Co. v. Wilmer, 87 M 382,
288 P 1021.

4057. Powers of commissioner. The state real estate commissioner, hereinafter referred to as the "commissioner," shall have full power to issue licenses to real estate brokers, and to make reasonable rules and regulations respecting the granting and suspension of the same, and to perform all other acts and duties necessary under the provisions of this act.

History: En. Sec. 2, Ch. 195, L. 1921; re-en. Sec. 4057, R. C. M. 1921.

4058. Real estate broker defined. A "real estate broker," within the meaning of this act, is a person who for a compensation, or promise thereof, sells or offers for sale, buys, or offers to buy, negotiates, or offers to negotiate, either directly or indirectly, whether as the employee of another or otherwise, the purchase, sale, exchange of real estate, or any interest therein, for others, as a whole or partial vocation. The word "person" as used in this act, shall be construed to mean and include a corporation. The provisions of this act shall not apply to any person who purchases property for his own use or account, nor to any person making one single transaction a year, nor to any person who, being the owner of property, sells, exchanges, or otherwise disposes of the same for his own account, nor to any person holding a duly executed power of attorney written in a separate instrument designated as such, from the owner granting power to consummate the sale, exchange or leasing of real estate, nor to the services rendered by an attorney at law for or on behalf of his client, nor to any receiver, trustee in bankruptcy, guardian, administrator, or executor, nor to any person acting under the order of the court, nor to any person selling under a deed of trust.

History: En. Sec. 3, Ch. 195, L. 1921;
re-en. Sec. 4058, R. C. M. 1921; amd. Sec.
1, Ch. 7, L. 1933.

Operation and Effect

The provision of section 4075, that one acting in the capacity of a real

estate broker cannot maintain an action for compensation unless he alleges and proves that at the time the cause of action arose he was duly licensed to act as a broker, has no application, under this section, to one who acts in that capacity in connection with a single transaction

only. Harbolt v. Hensen, 73 M 228, 233, 253 P 257.

Id. Evidence that a broker's contract was written on plaintiff's stationery showing his name and the legend "Real Estate" and his statement at the trial

that he never "deducted a mortgage on a commission" held too unsubstantial to warrant a finding that at the time the transaction in question took place he was a broker within the meaning of this section.

4059. Agreements respecting oil operations. Agreements of every kind respecting prospecting, drilling or operating land for oil, or disposing of the oil or oil mining rights therein, whether upon a royalty basis or otherwise, shall be deemed dealing in real estate.

History: En. Sec. 4, Ch. 195, L. 1921; re-en. Sec. 4059, R. C. M. 1921.

4060. License of real estate broker. It shall be unlawful for any person to engage in the business, or act in the capacity of, real estate broker within this state, without first obtaining a license therefor.

History: En. Sec. 5, Ch. 195, L. 1921; re-en. Sec. 4060, R. C. M. 1921.

4061. Disposal of fees and collections. All fees and collections paid to the commissioner by any person, under the provisions of this act, shall be by him paid to the state treasurer on the tenth and twenty-fifth days of each calendar month, and shall be placed by the state treasurer in the general fund of the state of Montana.

History: En. Sec. 6, Ch. 195, L. 1921; re-en. Sec. 4061, R. C. M. 1921; amd. Sec. 2, Ch. 40, L. 1925.

4062. Seal of commissioner—records as evidence. The commissioner shall adopt a seal with the words "real estate commissioner, state of Montana," and such other device as the commissioner shall approve engraved thereon, by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the commission certified to be a true copy under the hand and seal of the commissioner, shall be received in evidence in all cases equally and with like effect as the originals.

History: En. Sec. 7, Ch. 195, L. 1921; re-en. Sec. 4062, R. C. M. 1921.

4063. Duties of attorney general. The attorney general shall render to the commissioner opinions upon all questions of law relating to the construction or interpretation of this act, or arising in the administration thereof, that may be submitted to him by the commissioner, and shall act as attorney for the commissioner in all actions and proceedings brought by or against him under or pursuant to any of the provisions of this act.

History: En. Sec. 8, Ch. 195, L. 1921; re-en. Sec. 4063, R. C. M. 1921.

4064. Scope of licenses. No license issued by the commissioner shall authorize any person other than him to whom the license shall be issued to act as a real estate broker. Whenever a license is issued to a corporation, it shall entitle the corporation officers, not to exceed three, designated in the application for the license, to act in the capacity of real estate broker, in behalf of the corporation; and whenever a license is issued to a co-partnership it shall entitle the members of the co-partnership named by the co-partnership in its application for the license, to act in behalf of the co-partnership in the capacity of real estate broker.

History: En. Sec. 9, Ch. 195, L. 1921; re-en. Sec. 4064, R. C. M. 1921.

4065. License — application — bond — issuance — fee. Any person, co-partnership, or corporation, desiring to carry on the business of real estate

broker in this state shall make application for a license so to do upon a form prescribed by the commissioner, and shall file the same with the commissioner; when an individual makes the application, in the application shall be stated the full name of the applicant, and his business address, which shall be the place where he maintains his home office. The applicant shall file with the application a written recommendation, signed by at least five responsible freeholders of the county in which the home office of the applicant is, in which the freeholders must certify that they believe the applicant to be a man of good moral character, and in their judgment well qualified to carry on the business of real estate broker. The applicant shall also file with his application a good and sufficient bond in the sum of one thousand dollars, conditioned that the applicant shall conduct his business as real estate broker in accordance with the requirements of this act.

When a co-partnership makes application for a license it shall state in the application the full names of all the partners, their business addresses, the place where the principal office shall be maintained, and the commissioner shall require a recommendation, signed by at least five responsible freeholders of the county in which the home office of the co-partnership is, in which the freeholders must certify that they believe that each of the members of said co-partnership is a man of good moral character and in their judgment well qualified to carry on the business of real estate broker. The co-partnership shall also file with their application a good and sufficient bond in the sum of one thousand dollars, conditioned that the co-partnership shall conduct their business as real estate brokers in accordance with the requirements of this act.

An unincorporated association shall comply with the rules prescribed for a co-partnership.

When a corporation makes application for a license, it shall state in its application a list of its officers and directors, and their addresses, its principal place of business in this state, which shall be deemed its home office, and the names of the officers for whom a license is asked; the commissioner shall require its filing of a recommendation for each of said officers as in the case of an individual applicant, a good and sufficient bond in the sum of one thousand dollars, conditioned that the corporation shall conduct its business as a real estate broker in accordance with the requirements of this act.

The commissioner may require such other proof as he may deem advisable as to the honesty, truthfulness and good reputation of any applicant for a license, whether an individual or member of a co-partnership or officer of a corporation, before issuing the license; provided, however, that if a real estate broker has once been licensed under this act, upon his application for a renewal of his license, the commissioner may, in his discretion, waive the filing of new recommendations or references.

Upon the filing of the application, if the same be accompanied with a proper recommendation or recommendations, bond or bonds, and fee herein-after specified, if the commissioner is satisfied with the showing made, he shall forthwith issue the license, which shall continue thenceforward, unless revoked, until the first day of April next ensuing. If the commissioner shall

not be satisfied with the showing made by the applicant, or if the necessary bond or bonds, satisfactory to the commissioner be not given, he may refuse to issue the license, in which case the applicant may appeal to the district court within ten days after notice that his application has been rejected.

For every real estate broker's license issued, the commissioner shall require, before issuance, a fee of ten dollars, provided, that if a license be taken out after the first day of October, but one-half the fee shall be required, but the license shall expire on the first day of April following, and in case of licenses issued to co-partnerships, unincorporated associations, and corporations, he shall require such fee for each such co-partnership, unincorporated association, or corporation to whom such license is issued.

History: En. Sec. 10, Ch. 195, L. 1921; re-en. Sec. 4065, R. C. M. 1921.

4066. Salesman's license. The commissioner may issue a license to a person who acts as an agent for a duly licensed real estate broker, and who shall be designated as a salesman; the license shall be issued to him as a real estate broker (salesman). An applicant for a salesman's license shall comply in every respect with the rules and regulations provided for real estate brokers, except that he need not himself maintain a fixed place of business, but he must designate as his home office the office of a regularly licensed real estate broker, and must not change his home office without the commissioner's permission. A salesman shall pay an annual fee of five dollars, which shall accompany his application for a license, which license shall also expire on the first of April following.

History: En. Sec. 11, Ch. 195, L. 1921; re-en. Sec. 4066, R. C. M. 1921.

4067. Bonds—approval—action upon. All bonds given under the provisions of this act shall run to the state of Montana, shall be approved by the commissioner and be filed in his office. Any person who may be damaged by the wrongful acts of a real estate broker shall, in addition to the other legal remedies, have a right of action on the broker's or salesman's bond.

A person having a right of action against an agent acting in the scope of his authority shall have a right of action not only against the agent but also against the principal, and the principal's bond shall be liable for the acts of his agent.

History: En. Sec. 12, Ch. 195, L. 1921; re-en. Sec. 4067, R. C. M. 1921.

4068. Consent to suit by non-resident applicants. If an applicant be a non-resident of this state, he shall file an irrevocable consent that suits and actions may be commenced against him in any county of this state in which the plaintiff having a cause of action or suit may reside, and that service of any process or pleadings in said suit or action may be made by delivering same to the state insurance commissioner. Such service when so made to be taken and held in all courts to be as valid and binding upon the applicant as if in fact made upon said applicant in this state within the jurisdiction of the court in which said suit or action is filed; said "irrevocable consent" shall be in a form prescribed by the commissioner, shall be acknowledged before a notary public and if the applicant be a corporation said consent shall be accompanied by a duly certified copy of the resolutions

of the board of directors of such corporation authorizing the execution of the same; any process or pleading above mentioned so served upon the state insurance commissioner shall be served in duplicate copies, one of which shall be filed in the office of the state insurance commissioner, and the other immediately forwarded by registered mail to the office of the applicant named in his application and service shall be deemed to have been made upon said applicant on the third day following the deposit in the mail of said copy of said process or pleadings.

History: En. Sec. 13, Ch. 195, L. 1921; re-en. Sec. 4068, R. C. M. 1921.

4069. Home office of real estate brokers. Each person, corporation, or co-partnership licensed to act as real estate broker shall be required to maintain a definite place of business in the state of Montana, which shall serve as his or its home office. In the home office shall be displayed constantly, in a conspicuous place, the license, and if a salesman be employed his license shall likewise be displayed. If any person, co-partnership, association or corporation shall establish or maintain any office or place of business in addition to his or its principal place of business, then upon application to the commissioner, he shall, upon the payment of a fee of one dollar for each duplicate, issue a duplicate of said license for each additional office, which duplicate shall at all times be displayed in said additional office in like manner as the original, and each copy shall be plainly marked "duplicate" by the commissioner. Upon the issuance of a license to any real estate broker or to a salesman, the commissioner shall issue to the broker or salesman a pocket card of convenient size reciting that the broker is licensed to act as a real estate broker, or a real estate broker (salesman), for a stated period, showing the business address of the broker, or salesman, which card shall be signed and sealed by the commissioner. Notice in writing shall be given the commissioner of any change of business location, whereupon the commissioner shall issue a new license and pocket card covering the new business address, without charge; provided that the license previously issued, together with the pocket card shall be taken up by the commissioner before issuing the new one. A change of business location without notification to the commissioner shall automatically cancel the license heretofore issued.

It shall be unlawful for any licensed real estate broker or real estate broker (salesman) to pay any part or share of a commission or other compensation received by him in his capacity as a real estate broker, or real estate broker (salesman) to any person who is not duly licensed under the provisions of this act, except to brokers in other states or countries.

History: En. Sec. 14, Ch. 195, L. 1921; re-en. Sec. 4069, R. C. M. 1921.

4070. Suspension or revocation of license. The commissioner may, upon his own motion, and shall, upon verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or salesman within this state, and shall have the power to suspend or revoke licenses issued under the provisions of this act at any time where the holder thereof in performing or attempting to perform any of the acts mentioned in section 4058 of this code is guilty of:

- (a) Making any substantial misrepresentations, or
- (b) A continued or flagrant course of misrepresentation or making of false promises, whether through agents or salesmen, or otherwise; or
- (c) Failure to account for or remit for any property or moneys coming into his possession which belong to another; or
- (d) Any other conduct whether of the same or a different character than hereinbefore specified which constitutes dishonest dealing.

History: En. Sec. 15, Ch. 195, L. 1921; re-en. Sec. 4070, R. C. M. 1921.

4071. Suspension or revocation—appeal and bond. If the commissioner shall refuse to grant an application for a license, or shall suspend or revoke a broker's or salesman's license, and the broker or salesman shall feel aggrieved by the decision of the commissioner, he may appeal to the district court of the county in which he has his principal place of business by giving notice of such appeal in writing to the commissioner and filing a bond with the clerk of the district court in the sum of three hundred dollars, to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, said bond and notice to be filed within ten days from the date of the commissioner's decision. The filing of such notice and bond shall supersede the order of the commissioner until the final termination of such appeal. The judge of the court shall summarily hear and determine the questions involved upon said appeal, and shall receive and consider any pertinent evidence whether oral or documentary concerning the matter. If such aggrieved party shall fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. Appeals from judgment of the district court may be taken to the supreme court in the same manner as appeals are taken in civil actions.

History: En. Sec. 16, Ch. 195, L. 1921; re-en. Sec. 4071, R. C. M. 1921.

4072. Power of commissioners concerning oaths, subpoenas, process and witnesses. The commissioner shall have power to administer oaths, certify to all official acts and shall have power to subpoena and bring before him any person in this state as a witness, compel the production of books and papers, and take the testimony of any person by deposition in the same manner as is prescribed by law in the procedure of the district courts of this state in civil cases. Process issued by the commissioner shall extend to all parts of the state and may be served by any person authorized to serve process. Each witness who shall appear by order of the commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases appearing in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commissioner, his fees and mileage shall be paid in the same manner as other expenses of said department are paid.

History: En. Sec. 17, Ch. 195, L. 1921; re-en. Sec. 4072, R. C. M. 1921.

4073. Complaints for violation of act—duty county attorney. The commissioner may prefer a complaint for violation of any section of this

act before any court of competent jurisdiction. It shall be the duty of the county attorney of each county in the state to prosecute all violations of the aforesaid provisions of this act in their respective counties in which such violations occur.

History: En. Sec. 18, Ch. 195, L. 1921; re-en. Sec. 4073, R. C. M. 1921.

4074. Penalty for acting without license. Any person or corporation acting as a real estate broker or real estate broker (salesman) within the meaning of this act without a license as herein provided, shall, upon conviction thereof, be punished by a fine of not to exceed six hundred dollars.

History: En. Sec. 19, Ch. 195, L. 1921; re-en. Sec. 4074, R. C. M. 1921.

4075. Proof of license in actions for compensation. No person, co-partnership, association, or corporation, engaged in the business of, or acting in the capacity of a real estate broker, or salesman within this state shall maintain any action in any of the courts of this state to recover compensation for his services alleged to be earned as a real estate broker, or salesman, without alleging and proving that such person, co-partnership, association, or corporation was duly licensed under the provisions of this act at the time the alleged cause of action arose.

History: En. Sec. 20, Ch. 195, L. 1921; re-en. Sec. 4075, R. C. M. 1921.

Operation and Effect

The provision of this section that one acting in the capacity of a real estate broker cannot maintain an action for compensation unless he alleges and proves that at the time the cause of action arose he was duly licensed to act as a broker, has no application, under section 4058, to one who acts in that capacity in connection with a single transaction only. *Harbolt v. Hensen*, 78 M 228, 233, 253 P 257.

Id. One who is not a real estate broker within the meaning of this section to enable him to recover commissions on a sale procured by him is not required to allege and prove that at the time he was not a

broker; if he was a broker it was incumbent upon the defendant to so allege and prove, and by failing to do so he waived the point.

Where a defect in the complaint affects only the capacity of plaintiff to sue, as where a real estate broker in an action to recover commissions does not allege that he was duly licensed to act as a broker, such allegation being made a condition precedent to his maintaining the action (this section), defendant by failing to take advantage thereof by special demurrer or answer, waives it, a general demurrer not reaching the point, and may not for the first time raise it on appeal. *Piatt & Heath Co. v. Wilmer*, 87 M 382, 386, 288 P 1021.

4076. Notice termination employment of broker. Upon the termination of the employment of any real estate broker acting in the capacity of a salesman, a written statement of the facts, in reference thereto, shall be filed forthwith, by the employer, with the commissioner.

History: En. Sec. 21, Ch. 195, L. 1921; re-en. Sec. 4076, R. C. M. 1921.

4077. Mailing list licensed brokers. The commissioner shall at least annually mail to each person licensed under the provisions of this act, a list of the names and addresses of all licensed brokers in this state.

History: En. Sec. 22, Ch. 195, L. 1921; re-en. Sec. 4077, R. C. M. 1921.

4078. Effect of partial invalidity of act. If any section, sub-section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

History: En. Sec. 23, Ch. 195, L. 1921; re-en. Sec. 4078, R. C. M. 1921.

CHAPTER 318

REGULATION OF WAREHOUSEMEN (UNIFORM WAREHOUSE RECEIPTS ACT)

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4079. Warehouseman may issue receipts. Warehouse receipts may be issued by any warehouseman.

History: En. Sec. 1, Ch. 154, L. 1917; re-en. Sec. 4079, R. C. M. 1921.

NOTE.—Uniform state law.

Sections 4079 through 4138 constitute the “Uniform Warehouse Receipts Act” approved by the National Conference of

Commissioners of Uniform State Laws and adopted in every state of the United States with the exception of Georgia, Kentucky, New Hampshire and South Carolina. It has also been adopted in Alaska, District of Columbia, Philippine Islands and Porto Rico.

4080. Warehouse receipts—terms—liability for omission of terms. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

- (a) The location of the warehouse where the goods are stored;
- (b) The date of issue of the receipt;
- (c) The consecutive number of the receipt;
- (d) A statement whether the goods received will be delivered to bearer, to a specified person, or to a specified person or his order;
- (e) The rate of storage charges;
- (f) A description of the goods or of the packages containing them;
- (g) The signature of the warehouseman, which may be made by his authorized agent;
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and
- (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission from a negotiable receipt of any of the terms herein required.

History: En. Sec. 2, Ch. 154, L. 1917; re-en. Sec. 4080, R. C. M. 1921.

4081. Insertion of other conditions—effect. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

- (a) Be contrary to the provisions of this act;
- (b) In any wise impair his obligation to exercise that degree of care in safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

History: En. Sec. 3, Ch. 154, L. 1917; re-en. Sec. 4081, R. C. M. 1921.

4082. Non-negotiable receipt—definition. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

History: En. Sec. 4, Ch. 154, L. 1917; re-en. Sec. 4082, R. C. M. 1921.

4083. Negotiable receipt—definition. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provisions shall be inserted in a negotiable receipt that is non-negotiable. Such provisions, if inserted, shall be void.

History: En. Sec. 5, Ch. 154, L. 1917; re-en. Sec. 4083, R. C. M. 1921.

4084. Duplicate receipts, how marked—liability for failure to mark. When more than one negotiable receipt is issued for the same goods, the word “duplicate” shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

History: En. Sec. 6, Ch. 154, L. 1917; re-en. Sec. 4084, R. C. M. 1921.

4085. Non-negotiable receipts, how marked—option of holder when not properly designated. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it “non-negotiable,” or “not negotiable.” In case of the warehouseman’s failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

History: En. Sec. 7, Ch. 154, L. 1917; re-en. Sec. 4085, R. C. M. 1921.

4086. Delivery of goods upon demand. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

- (a) An offer to satisfy the warehouseman’s lien;
- (b) An offer to surrender the receipt if negotiable with such indorsements as would be necessary for the negotiation of the receipt, and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

History: En. Sec. 8, Ch. 154, L. 1917; re-en. Sec. 4086, R. C. M. 1921.

4087. To whom goods may be delivered. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent;

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate endorsee.

History: En. Sec. 9, Ch. 154, L. 1917; re-en. Sec. 4087, R. C. M. 1921.

4088. Warehouseman when liable for conversion. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

History: En. Sec. 10, Ch. 154, L. 1917; re-en. Sec. 4088, R. C. M. 1921.

4089. Liability of warehouseman for failure to take up negotiable receipt. Except as provided in section 4114 of this code, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

History: En. Sec. 11, Ch. 154, L. 1917; re-en. Sec. 4089, R. C. M. 1921.

4090. Same—liability when portion of goods delivered. Except as provided in section 4114 of this code, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

History: En. Sec. 12, Ch. 154, L. 1917; re-en. Sec. 4090, R. C. M. 1921.

4091. Alteration of receipt—when not an excuse from liability. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

- (a) Immaterial;
- (b) Authorized, or
- (c) Made with fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

History: En. Sec. 13, Ch. 154, L. 1917; re-en. Sec. 4091, R. C. M. 1921.

4092. Court may order delivery when receipt has been lost or destroyed—bond and costs. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also, in its discretion, order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

History: En. Sec. 14, Ch. 154, L. 1917; re-en. Sec. 4092, R. C. M. 1921.

4093. Duplicate receipt—warranty of what. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

History: En. Sec. 15, Ch. 154, L. 1917; re-en. Sec. 4093, R. C. M. 1921.

4094. Delivery of goods by warehouseman—when excused by title or right of possession. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

History: En. Sec. 16, Ch. 154, L. 1917; re-en. Sec. 4094, R. C. M. 1921.

4095. Procedure on suit when goods are claimed by more than one person. If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

History: En. Sec. 17, Ch. 154, L. 1917; re-en. Sec. 4095, R. C. M. 1921.

4096. When warehouseman may retain goods in case of adverse claim. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

History: En. Sec. 18, Ch. 154, L. 1917; re-en. Sec. 4096, R. C. M. 1921.

4097. Claim of third person not a defense to action for failure to deliver. Except as provided in the two preceding sections and in sections 4087 and 4114 of this code, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

History: En. Sec. 19, Ch. 154, L. 1917; re-en. Sec. 4097, R. C. M. 1921.

4098. Liability of warehouseman for non-existence of goods or failure to correspond to description. A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

History: En. Sec. 20, Ch. 154, L. 1917; re-en. Sec. 4098, R. C. M. 1921.

4099. Liability for want of care. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

History: En. Sec. 21, Ch. 154, L. 1917; re-en. Sec. 4099, R. C. M. 1921.

4100. Goods to be kept separately to permit identification. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

History: En. Sec. 22, Ch. 154, L. 1917; re-en. Sec. 4100, R. C. M. 1921.

4101. When interchangeable goods may be commingled. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

History: En. Sec. 23, Ch. 154, L. 1917; re-en. Sec. 4101, R. C. M. 1921.

4102. Liability of warehouseman to depositors of commingled goods. The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

History: En. Sec. 24, Ch. 154, L. 1917; re-en. Sec. 4102, R. C. M. 1921.

4103. When goods cannot be attached or levied on in warehouseman's possession—surrender of receipt. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon by an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

History: En. Sec. 25, Ch. 154, L. 1917; re-en. Sec. 4103, R. C. M. 1921.

4104. Remedies of creditors. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History: En. Sec. 26, Ch. 154, L. 1917; re-en. Sec. 4104, R. C. M. 1921.

4105. Warehouseman's lien. Subject to the provisions of section 4108 of this code, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping, and other charges and expenses in relation to such goods; also for all reasonable charges and the expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

History: En. Sec. 27, Ch. 154, L. 1917; re-en. Sec. 4105, R. C. M. 1921.

4106. Enforcement of warehouseman's lien. Subject to the provisions of section 4108 of this code, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which lien is asserted, and

(b) Against all goods belonging to other which have been deposited at any time by the person who is liable as debtor for the claims in regard

to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

History: En. Sec. 28, Ch. 154, L. 1917; re-en. Sec. 4106, R. C. M. 1921.

4107. How lien is lost. A warehouseman loses his lien upon goods—

- (a) By surrendering possession thereof, or
- (b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

History: En. Sec. 29, Ch. 154, L. 1917; re-en. Sec. 4107, R. C. M. 1921.

4108. Lien in case negotiable receipt is issued. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerate other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 4105 of this code, although the amount of the charges so enumerated is not stated in the receipt.

History: En. Sec. 30, Ch. 154, L. 1917; re-en. Sec. 4108, R. C. M. 1921.

4109. Warehouseman may refuse delivery until lien is satisfied. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

History: En. Sec. 31, Ch. 154, L. 1917; re-en. Sec. 4109, R. C. M. 1921.

4110. Warehouseman entitled to charges and advances in all cases. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

History: En. Sec. 32, Ch. 154, L. 1917; re-en. Sec. 4110, R. C. M. 1921.

4111. Satisfaction of warehouseman's lien—advertisement and sale of goods and disposition of proceeds. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

- (a) An itemized account of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;
- (b) A brief description of the goods against which the lien exists;
- (c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and
- (d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

History: En. Sec. 33, Ch. 154, L. 1917; re-en. Sec. 4111, R. C. M. 1921.

4112. Notice to pay charges and remove perishable and other goods—sale and disposition. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman, after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

History: En. Sec. 34, Ch. 154, L. 1917; re-en. Sec. 4112, R. C. M. 1921.

4113. Remedy for enforcing lien not exclusive. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the

right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

History: En. Sec. 35, Ch. 154, L. 1917; re-en. Sec. 4113, R. C. M. 1921.

4114. Liability of warehouseman after goods have been sold to satisfy lien. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

History: En. Sec. 36, Ch. 154, L. 1917; re-en. Sec. 4114, R. C. M. 1921.

4115. Negotiation of receipts—by delivery—when receipt is indorsed. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

History: En. Sec. 37, Ch. 154, L. 1917; re-en. Sec. 4115, R. C. M. 1921.

4116. Negotiation by indorsement. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

History: En. Sec. 38, Ch. 154, L. 1917; re-en. Sec. 4116, R. C. M. 1921.

4117. Transfer of non-negotiable receipts. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such receipt gives the transferee no additional right.

History: En. Sec. 39, Ch. 154, L. 1917; re-en. Sec. 4117, R. C. M. 1921.

4118. Who may negotiate a receipt. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at

the time of such intrusting the receipt is in such form that it may be negotiated by delivery.

History: En. Sec. 40, Ch. 154, L. 1917; re-en. Sec. 4118, R. C. M. 1921.

4119. Rights of transferee when receipt has been negotiated. A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

History: En. Sec. 41, Ch. 154, L. 1917; re-en. Sec. 4119, R. C. M. 1921.

4120. Rights of transferee when receipt has not been negotiated—notice to warehouseman—when and how rights may be defeated. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title of the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or by a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

History: En. Sec. 42, Ch. 154, L. 1917; re-en. Sec. 4120, R. C. M. 1921.

4121. When transferee of negotiable receipt may enforce indorsement. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

History: En. Sec. 43, Ch. 154, L. 1917; re-en. Sec. 4121, R. C. M. 1921.

4122. Warranty in case of negotiation or transfer of receipt for value. A person who, for value, negotiates or transfers a receipt by indorsement or delivery, including one who assigns, for value, a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine;
(b) That he has a legal right to negotiate or transfer it;
(c) That he has a knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

History: En. Sec. 44, Ch. 154, L. 1917; re-en. Sec. 4122, R. C. M. 1921.

4123. Indorser of receipt not liable for what. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

History: En. Sec. 45, Ch. 154, L. 1917; re-en. Sec. 4123, R. C. M. 1921.

4124. Mortgagee or pledgee when debt is paid not deemed to warrant what. A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

History: En. Sec. 46, Ch. 154, L. 1917; re-en. Sec. 4124, R. C. M. 1921.

4125. Non-impairment of the validity of negotiation of a receipt. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

History: En. Sec. 47, Ch. 154, L. 1917; re-en. Sec. 4125, R. C. M. 1921.

4126. Negotiations for value of a receipt not affected by what. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized a subsequent negotiation.

History: En. Sec. 48, Ch. 154, L. 1917; re-en. Sec. 4126, R. C. M. 1921.

4127. Rights of purchaser for value of a receipt not defeated by seller's lien or stoppage in transit—unpaid seller to surrender receipt to warehouseman. Where a negotiable receipt has been issued for goods, no seller's liens or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified

in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

History: En. Sec. 49, Ch. 154, L. 1917; re-en. Sec. 4127, R. C. M. 1921.

4128. Penalty for warehouseman to issue receipt when goods have not been delivered. A warehouseman or any officer, agent, or servant of a warehouseman who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

History: En. Sec. 50, Ch. 154, L. 1917; re-en. Sec. 4128, R. C. M. 1921.

4129. Penalty for warehouseman to fraudulently issue receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 51, Ch. 154, L. 1917; re-en. Sec. 4129, R. C. M. 1921.

4130. Penalty for warehouseman to issue duplicate negotiable receipt when original is outstanding without marking the same "duplicate." A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 4092 of this code, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

History: En. Sec. 52, Ch. 154, L. 1917; re-en. Sec. 4130, R. C. M. 1921.

4131. Penalty for issuing negotiable receipt for goods of which warehouseman is owner. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 53, Ch. 154, L. 1917; re-en. Sec. 4131, R. C. M. 1921.

4132. Penalty for delivering goods against which negotiable receipt is outstanding without obtaining possession of same. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods if outstanding and uncanceled, without obtaining the possession of

such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 4092 and 4114 of this code, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 54, Ch. 154, L. 1917; re-en. Sec. 4132, R. C. M. 1921.

4133. Penalty for negotiating receipt for deposited goods with defective title. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 55, Ch. 154, L. 1917; re-en. Sec. 4133, R. C. M. 1921.

4134. What laws applicable in cases where this act does not prescribe rule. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

History: En. Sec. 56, Ch. 154, L. 1917; re-en. Sec. 4134, R. C. M. 1921.

4135. How act shall be interpreted and construed. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 57, Ch. 154, L. 1917; re-en. Sec. 4135, R. C. M. 1921.

4136. Definitions. (1) In this act, unless the context or subject-matter otherwise requires—

“Action” includes counter-claim, set-off, and suit in equity.

“Delivery” means a voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as a mortgagee or as a pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract.

An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

(2) A thing done “in good faith,” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

History: En. Sec. 58, Ch. 154, L. 1917; re-en. Sec. 4136, R. C. M. 1921.

4137. To what receipts act does not apply. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

History: En. Sec. 59, Ch. 154, L. 1917; re-en. Sec. 4137, R. C. M. 1921.

4138. Act, how cited. This act may be cited as the uniform warehouse receipts act.

History: En. Sec. 62, Ch. 154, L. 1917; re-en. Sec. 4138, R. C. M. 1921.

4139. Repealed—Chapter 105, laws of 1931.

CHAPTER 319

REGULATION OF TITLE ABTRACTER

Section 4139.1.	Abstract records and registered abstracter required.
4139.2.	Abstracters board of examiners.
4139.3.	Organization of board.
4139.4.	Compensation of members of board—disposition of funds.
4139.5.	Records of board.
4139.6.	Reports of board.
4139.7.	Registered abstracters defined.
4139.8.	Examination of applicants.
4139.9.	Registration of abstracters without examination.
4139.10.	Certificate of registration—contents and issuance—temporary certificates.
4139.11.	Certificate of authority—contents and issuance.
4139.12.	No abstract books or indices required under certain conditions.
4139.13.	Bond or other securities required.
4139.14.	Seal.
4139.15.	Regulation of abstracters—violations—appeals.
4139.16.	Abstract prima facie evidence of its contents.
4139.17.	Penalty.
4139.18.	To whom provisions of this act shall not apply.
4141.	Compensation of abstracters.
4142.	Abstract prima facie evidence of its contents.

4139.1. Abstract records and registered abstracter required. Any person, firm or corporation desiring to engage in or continue the business of making and compiling abstracts of title to real estate within the state of Montana, shall have for use in such business a set of abstract books or other system of indices or records showing in a sufficiently comprehensive form all instruments affecting title to real property on file or of record in the office of the county clerk and recorder of each county wherein they abstract the titles of the lands, lots or tracts of land in said counties or county, and shall have in charge of such business a registered abstracter, as hereinafter defined, and shall first obtain a certificate of authority, and file and furnish the bond or other securities required, and shall comply with the other requirements herein provided, save and except as may be hereinafter expressly excepted.

History: En. Sec. 1, Ch. 105, L. 1931.

“Abstract of Title”—Definition

An “abstract of title” is an epitome of the conveyances, transfers and other facts

relied upon as evidence of title, together with all such facts appearing of record as may impair the title. *State v. Abstracters Board of Examiners*, 99 M 564, 577, 45 P 2d 668.

Constitutionality

This section held constitutional in *State v. Abstracters Board of Examiners*, 99 M 564, 45 P 2d 668.

Operation and Effect

In a proceeding in mandamus to compel the abstracters board of examiners to issue to plaintiff a certificate under the provision of this chapter, requiring an applicant for a certificate permitting him to do business as an abstractor to have for use a set of "abstract books or other systems of indices or records showing in a sufficiently comprehensive form all instruments affecting title to real property in a county,"

held that a showing that the applicant had access to the records of the county was insufficient to meet the requirements of the act. *State v. Abstracters Board of Examiners*, 99 M 564, 45 P 2d 668.

Id. Held, on application for writ of mandate to compel the abstracters board of examiners to grant a certificate to relater, an abstractor of many years' experience and well qualified to conduct such business, that the board in denying the request because he did not own or control the requisite plant and tract indices prescribed by this chapter, did not abuse its discretion, and that the district court in declaring otherwise committed error.

4139.2. Abstracters board of examiners. There is hereby created a board to be known as the abstracters board of examiners, to carry out the purposes and enforce the provisions of this article; said board shall consist of three members to be appointed by the governor of the state of Montana, and who shall at all times be registered abstracters as provided in this act, and no two members of said board shall be appointed from the same county. Each member of said board shall serve thereon for a term of three years and until his successor is appointed and qualified, excepting that the first members of said board shall be appointed from abstracters who have been actively engaged in the preparation of abstracts of title to real estate in the state of Montana for at least five years immediately preceding the first day of March, 1931, and who can qualify under section 4139.9, and shall be appointed, one for one year, one for two years, and the other for three years; the term of office to commence on the date this law goes into effect. Each member of said board shall qualify by taking the oath provided by law for public officers; vacancies on said board caused by death, resignation or otherwise shall be filled by appointment by the governor, as above provided.

History: En. Sec. 2, Ch. 105, L. 1931.

4139.3. Organization of board. Said board shall organize by the election of a chairman and a secretary. The secretary may or may not be a member of said board, but shall be a registered abstractor as hereinafter defined and shall be engaged in that business. The board shall have a seal and shall have the power to compel the attendance of witnesses, and the chairman and secretary shall have power to administer oaths. Said board may adopt such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the purposes of this act.

History: En. Sec. 3, Ch. 105, L. 1931.

4139.4. Compensation of members of board—disposition of funds. Each member of the board shall receive a compensation of five dollars per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive ten cents per mile for each mile actually traveled, and the further sum of five dollars per day for expenses while absent from home upon business connected with the board, which amount shall be paid upon verified vouchers after allowance by said

board out of any funds in the hands of the state treasurer in the abstracters board fund.

And there is hereby established a fund to be known as the abstracters board fund. All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the abstracters board fund, to meet the expenses incurred in carrying out the provisions of this act; provided, the expenses of said board shall not exceed the fees collected.

History: En. Sec. 4, Ch. 105, L. 1931.

4139.5. Records of board. Said board shall keep a register, wherein it shall enter the name of all applicants for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the dates upon which certificates of registration and certificates of authority are issued.

History: En. Sec. 5, Ch. 105, L. 1931.

4139.6. Reports of board. Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act, which said report shall not be printed except as the expense of the fund herein provided for.

History: En. Sec. 6, Ch. 105, L. 1931.

4139.7. Registered abstracters defined. Registered abstracters, within the meaning of this act, shall comprise all persons who shall, on the first day of March, 1931, be in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the state of Montana under the provisions of section 4140 of the revised codes of Montana, 1921, and who shall obtain a certificate of registration as hereinafter provided, or persons who shall be granted certificates of registration by the said abstracters board of examiners after the passage of this act.

History: En. Sec. 7, Ch. 105, L. 1931.

NOTE.—Section 4140 referred to in this section was repealed and superseded by Ch. 105, L. 1931 (sections 4139.1-4139.18 of this code).

4139.8. Examination of applicants. Any person desiring to obtain a certificate of registration under this act shall make application to said board therefor and shall pay to the secretary of said board an examination fee of twenty-five dollars, except as hereinafter provided. Such application shall be upon a form to be prepared by said board and to contain such information as may be desired by it. Thereupon said board shall fix a date and place for the examination of such applicant, of which notice shall be given to applicant by mail, who shall present himself at such meeting; whereupon said board shall proceed to examine such applicant or applicants under such rules and regulations as may be by said board prescribed.

History: En. Sec. 8, Ch. 105, L. 1931.

4139.9. Registration of abstracters without examination. Any person, who, on the first day of March, 1931, is in charge, either individually or

jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the state of Montana under the provisions of section 4140 of the revised codes of 1921, and who shall make application to the abstracters board of examiners prior to the expiration of said certificate of authority, shall upon the payment of a fee of five dollars, be issued a certificate of registration, without examination, under such rules as may be provided by said board.

History: En. Sec. 9, Ch. 105, L. 1931.

NOTE.—See note to section 4139.7.

4139.10. Certificate of registration—contents and issuance—temporary certificates. The certificate of registration issued by said board under the provisions hereof shall recite, among other things, that the holder thereof has complied with the provisions of this act relating to examination or otherwise, and shall entitle the holder of such certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority under the provisions of this act.

Certificates of registration shall be issued upon the payment of five dollars fee and shall be valid for one year from the date thereof but shall be renewed annually by said board upon application within thirty days prior to the expiration thereof upon a payment of one dollar to the secretary of said board. Said board may issue temporary certificates of registration in their discretion between meetings of said board.

History: En. Sec. 10, Ch. 105, L. 1931.

4139.11. Certificate of authority—contents and issuance. Any person, firm or corporation desiring to obtain a certificate of authority under this act shall make application to said board therefor and shall pay to the secretary of said board an application fee of five dollars. Such application shall be upon a form to be prepared by said board and to contain such information as may be desired by it.

Every person, firm or corporation, who shall furnish satisfactory proof to said board that applicant has for use in such business a set of abstract books or other system of indices and shall have in charge of such business a registered abstracter as provided for in section 4139.1 hereof, and shall furnish the bond, or other securities, and pay the application fee herein provided, shall be entitled, upon compliance with the other provisions of this law, to receive from said board a certificate of authority.

Certificates of authority shall be valid for one year from the date thereof but shall be renewed by said board upon application within thirty days prior to the expiration thereof upon payment of five dollars to the secretary of said board, which application shall be accompanied by an affidavit and such other evidence deemed necessary, showing that applicant has complied with the provisions of this act.

The certificate of authority issued by said board under the provisions hereof, shall, among other things, recite that the bond or bonds, or other securities, as hereinafter required have been duly filed and approved, and such certificate shall authorize the person, firm or corporation, named in it, to engage in and carry on the business of an abstracter of real estate titles in the county or counties of the state of Montana, in which said person,

firm or corporation has for use a set of abstract books or system of indices as provided for in section 4139.1 hereof, and for that purpose to have access to the public records in any office of any city, county or of the state during office hours, and to make such memoranda or notation therefrom as may be necessary for the purpose of making such abstracts, and the compiling, posting, copying and keeping up of their abstract books, indices or records, such access to be during ordinary office hours.

History: En. Sec. 11, Ch. 105, L. 1931.

References

State v. Abstracters Board of Examiners, 99 M 564, 45 P 2d 668.

4139.12. No abstract books or indices required under certain conditions.

Any person, firm or corporation not having the abstract books or indices as required by section 4139.1, and who, upon the first day of March, 1931, is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the state of Montana pursuant to section 4140 of the revised codes of 1921, and who shall make application to said board prior to the expiration of such certificate of authority, and who shall comply with the other requirements hereof providing for a registered abstracter, bond and other provisions, shall, upon the payment of five dollars as is herein provided, be issued a certificate of authority under the provisions of this act.

Any person, firm or corporation, desiring to engage in the business of making and compiling abstracts of title to real property in any county in this state and who is not at the time of making application to said board for a certificate of authority provided with the abstract books or indices to the records in the county clerk and recorder's office of such county as required by section 4139.1, and who can comply with the other requirements hereof providing for a registered abstracter, bond and other provisions, shall, upon submitting satisfactory proof to said board that he has been engaged in good faith in the preparation of such abstract books or indices and that upon the date of such application that such abstract books or indices are at least fifty per cent completed and that he intends to complete the same, and upon the payment of five dollars, be issued a temporary certificate of authority good for a period of one year, and, upon good cause being shown to said board, such certificate may be renewed, upon payment of five dollars, for an additional term of one year only.

History: En. Sec. 12, Ch. 105, L. 1931.

NOTE.—See note to section 4139.7.

References

State v. Abstracters Board of Examiners, 99 M 564, 45 P 2d 668.

4139.13. Bond or other securities required. Before a certificate of authority shall be issued, the applicant shall file with the board a bond or bonds, to be approved by it, running to the state of Montana, in the penal sum of five thousand dollars, for the use of any owner, mortgagee or other person having an actual interest in the real estate covered by an abstract of title, or any title insurance company licensed and authorized to do business in this state, who may be aggrieved; such bond or undertaking shall be conditioned for the payment by such abstracter of any and all damages that may be sustained by or may accrue to any such person or company by reason of or on account of any error, deficiency or mistake in any ab-

abstract or certificate of title, or any continuation thereof, made or issued by such abstracter; said bond shall be written by some surety or other company issuing such bonds and licensed and authorized to do business in this state, and no personal bonds are to be accepted under this provision. The bond or undertaking herein provided for shall be in full force and effect for a period of one year, and may be renewed annually by a continuation certificate; such continuation certificate, however, shall not increase the amount of liability under the original bond. Provided, however, that no person, firm or corporation shall be required at any time to have in force and effect with said board, valid bonds in excess of the penal sum of five thousand dollars.

And provided, however, that in lieu of such bond or bonds, said applicant may deposit with the state treasurer of the state of Montana public bonds or other securities as the board may prescribe, approve and deem fully sufficient to insure the payment of the penal sum of five thousand dollars. Such securities so deposited may be exchanged from time to time, with the approval of the board, for other securities. The party so depositing such securities shall have the right and shall be permitted to receive the interest and dividends on the securities so deposited. Said securities shall be subject to sale and transfer and to the disposal of the proceeds by said board only on the order of a court of competent jurisdiction, and for the benefit of persons aggrieved as in this section provided. The state treasurer shall give his receipt for such securities, and the state shall be responsible for their custody and safe return.

History: En. Sec. 13, Ch. 105, L. 1931.

4139.14. Seal. Any person, firm or corporation furnishing abstracts of title to real property under the provisions hereof shall provide a seal, which seal shall have stamped thereon the name and location of such person, firm or corporation, and shall deposit with the secretary of the board an impression of such seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority shall issue, which seal shall be affixed to every abstract or certificate of title issued by such person, firm or corporation, and to every continuation thereof.

History: En. Sec. 14, Ch. 105, L. 1931.

4139.15. Regulation of abstracters—violations—appeals. The board shall have, and it is hereby given the power to cancel and revoke any certificate of registration issued to any person under the provisions of this act for a violation of any of the provisions of this act, or upon a conviction of the holder of such certificate of a crime involving moral turpitude, or if the board finds such holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices. The board shall also have and it is hereby given the power to cancel and revoke any certificate of authority issued to any person, firm or corporation under the provisions of this act for failure to furnish the bond or bonds, or other securities, required by section 4139.13, or such new or additional bonds as the board deems necessary, or for failure to maintain such indices and abstract records, or for failure to have in charge of such business a registered abstracter as herein provided, or shall otherwise violate any of the provisions of this act. Upon

a verified complaint being filed with the board charging the holder of a certificate of registration with a violation of any of the provisions of this act or conviction of a crime involving moral turpitude, or with habitual carelessness, or inattention to business, or fraudulent practices, or charging the holder of a certificate of authority with failure to furnish the bond or bonds, or other securities, required by section 4139.13, or such new or additional bonds, or securities as the board deems necessary, or with failure to have in charge of his or its abstract business, a registered abstractor as herein provided, or with a violation of any of the provisions of this act, the board shall immediately notify in writing said holder of such certificate, of the filing of said complaint and furnish the said holder with a copy of the said complaint. The board shall at the same time require the holder of such certificate to appear before it on a day fixed by said board, not less than twenty nor more than forty days from the date of the service of said complaint on the holder of such certificate, and to show cause why the said certificate should not be canceled and annulled. The board shall cause a transcript of any testimony taken, to be made by a stenographer. Either the abstractor or the complainant may appeal from the decision of the board to the district court of the county in which the abstractor has his or its place of business. Such appeal shall be taken within thirty days after the decision of the board, by causing a written notice of appeal to be served on the secretary of the board and executing a bond to the state of Montana, with surety to be approved by the secretary of the board, conditioned to prosecute such appeal to effect and to pay all costs that may be adjudged against the appellant. The secretary of the board, upon an appeal being taken, must immediately make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, including a certified record of the testimony taken at the hearing, with the clerk of the district court to which said appeal is taken. The district court shall hear the appeal in a summary manner on such record, and the cost of such appeal including the furnishing of the testimony shall be taxed against either the abstractor or the complainant, whichever is defeated on such appeal. An appeal shall stay the cancellation of any certificate of registration or certificate of authority until the final decision on appeal.

History: En. Sec. 15, Ch. 105, L. 1931.

4139.16. Abstract prima facie evidence of its contents. Any abstract of title to real estate, certified to be true and correct by any abstractor holding a valid and subsisting certificate of authority from the board, as herein provided, shall be received by the courts of this state as prima facie evidence of its contents under such rules and regulations as to procedure as such courts may promulgate.

History: En. Sec. 16, Ch. 105, L. 1931.

4139.17. Penalty. Any person, firm or corporation, making, compiling or certifying to abstracts of title to real property in this state without having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding six hundred dollars nor less than one hundred dollars for each

offense. This act does not impair the right of any person to examine the public records and to make such copies or abstracts of instruments filed or recorded as he or she may desire.

History: En. Sec. 17, Ch. 105, L. 1931.

4139.18. To whom provisions of this act shall not apply. Nothing in this act shall be construed as prohibiting any person, firm or corporation holding a valid and subsisting certificate of authority as herein provided, from employing such additional clerical and stenographic assistants as may be necessary; provided, however, that such assistants are at all times under the supervision of a registered abstractor, and provided further, that the provisions of this act shall not apply to county clerks and recorders or persons employed by counties in the preparation of abstracts of title.

History: En. Sec. 18, Ch. 105, L. 1931.

References

State v. Abstracters Board of Examiners, 99 M 564, 45 P 2d 668.

4140. Repealed—Chapter 105, laws of 1931.

4141. Compensation of abstractors. The compensation to be charged and received by abstractors of title shall be and remain a matter of contract between the parties.

History: En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R. C. M. 1921.

4142. Abstract prima facie evidence of its contents. Any abstract of title to real estate, certified to be true and correct by any abstractor holding a valid and subsisting certificate of authority from the state treasurer, as herein provided, shall be received by the courts of this state as prima facie evidence of its contents, under such rules and regulations as to procedure as such courts may promulgate.

History: En. Sec. 4, Ch. 43, L. 1915; re-en. Sec. 4142, R. C. M. 1921.

References

Rinio v. Kester, 99 M 1, 41 P 2d 405.

4143-4146. Repealed—Chapter 105, laws of 1931.

CHAPTER 320

REGULATION OF AUCTIONEERS

- Section 4147. Auctioneer—authority and bond.
 4148. The bond—sureties, approval, and filing.
 4149. Auctioneers ex-officio.
 4150. Assistant—who may act and when.
 4151. Auctioneers to designate places of business.
 4152. To sell at no other place.
 4153. Power of city authorities.
 4154. Book for livestock.
 4155. Book of sales.
 4156. Commissions, and penalty for overcharge.

4147. Auctioneer—authority and bond. Any citizen of this state may become an auctioneer, and be authorized to sell real or personal property at public auction in any county in this state, on giving a bond in accordance with the provisions of this chapter for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R. C. M. 1921. Cal. Pol. C. Sec 3284.

4148. The bond—sureties, approval, and filing. The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R. C. M. 1921. Cal. Pol. C. Sec. 3285.

4149. Auctioneers ex-officio. In any city or town where there is no auctioneer, the sheriff or a constable thereof is ex-officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex-officio auctioneer he is liable on his official bond.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R. C. M. 1921. Cal. Pol. C. Sec. 3291.

4150. Assistant—who may act and when. Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a copartner or clerk to hold such auction in his name and behalf, such employee to take and file with the county clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R. C. M. 1921. Cal. Pol. C. Sec. 3292.

4151. Auctioneers to designate places of business. No auctioneer in any city of this state must have at one time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the clerk of the county in which said city is situated a writing signed by him, designating such place, and naming therein the partners, if any, engaged with him in business.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R. C. M. 1921. Cal. Pol. C. Sec. 3302.

4152. To sell at no other place. No auctioneer must expose to sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have been usually sold in warehouses, or in the public streets, or on the wharves.

History: En. Sec. 3421, Pol. C. 1895; re-en. Sec. 2129, Rev. C. 1907; re-en. Sec. 4152, R. C. M. 1921. Cal. Pol. C. Sec. 3303.

4153. Power of city authorities. The city council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient.

History: En. Sec. 3422, Pol. C. 1895; re-en. Sec. 2130, Rev. C. 1907; re-en. Sec. 4153, R. C. M. 1921. Cal. Pol. C. Sec. 3304.

4154. Book for livestock. Every auctioneer who sells any animal of the horse kind, or any mules, must keep a book, in which he must register the name of each and every person bringing or offering any horse or mule to be sold, together with the marks and brands. The book is a public record, subject to the inspection of any person desiring to inspect the same.

History: Earlier acts were Secs. 1 and 2, p. 372, Cod. Stat. 1871; Secs. 2 and 3, 5th Div. Rev. Stat. 1879; Secs. 25 and 26, 5th Div. Comp. Stat. 1887. This section en. Sec. 3423, Pol. C. 1895; re-en. Sec. 2131, Rev. C. 1907; re-en. Sec. 4154, R. C. M. 1921. Cal. Pol. C. Sec. 3305.

4155. Book of sales. Each auctioneer must keep a book, in which he must enter all sales, showing the name of the owner of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book must at all times be open for the inspection of any person interested therein.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R. C. M. 1921. Cal. Pol. C. Sec. 3306.

4156. Commissions, and penalty for overcharge. No auctioneer must demand or receive a higher compensation for his services than a commission of one per cent. on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, in addition to the criminal penalty, forfeits to the party aggrieved two hundred and fifty dollars, and must refund the excess of charge.

History: En. Sec. 3425, Pol. C. 1895; re-en. Sec. 2133, Rev. C. 1907; re-en. Sec. 4156, R. C. M. 1921. Cal. Pol. C. Sec. 3309.

CHAPTER 321

REGULATION OF EMPLOYMENT AGENCIES—LICENSES

- Section 4157. Definition of terms used in act.
 4158. License to conduct employment agency—fee.
 4159. Contents of license.
 4160. Application for license.
 4161. Bond of applicant.
 4162. Action upon bond.
 4163. Registers to be kept by licensed persons.
 4164. Fees which may be charged applicants—repayment of fees.
 4165. Receipts to be delivered to applicants for employment and help.
 4166. Gifts or other things of value in lieu of fees prohibited.
 4167. Applicants for employment entitled to card—contents of card.
 4168. Copies of act to be posted where.
 4169. Duty of licensed persons when sending contract laborers outside of county.
 4170. Female applicants not to be sent to questionable places.
 4171. False and fraudulent advertising—name and address of agency to appear on advertising matter.
 4172. Violation of act a misdemeanor—penalty.

4157. Definition of terms used in act. The term “person,” when used in this act, means and includes any individual, company, association, or corporation, or their agents, and the term “employment agency” means and includes the business of keeping an intelligence office, employment bureau, or other agency or office for procuring work or employment for persons seeking employment, where a fee or privilege is exacted, charged, or received, directly or indirectly, for procuring or assisting to procure employment, work, or a situation of any kind, or for procuring or providing help for any person, whether such fee is collected from the applicant for employment or the applicant for help, excepting agencies for procuring employment for school teachers exclusively. The term “fee” as used in this act means money or other thing of value, or a promise to pay money or thing of value.

History: En. Sec. 1, Ch. 225, L. 1919; re-en. Sec. 4157, R. C. M. 1921.

4158. License to conduct employment agency—fee. No person shall open, keep, or carry on any such employment agency in the state of Montana, unless every such person shall procure a license therefor from the county treasurer of the county in which such person intends to conduct such agency. Such license shall be granted upon the payment to said county treasurer of a fee of five dollars annually for such employment agencies.

History: En. Sec. 2, Ch. 225, L. 1919; re-en. Sec. 4158, R. C. M. 1921.

4159. Contents of license. Every license shall contain the name of the person licensed, a designation of the city, street, and number of the house in which the person licensed is authorized to carry on said employment agency, and the number and date of such license.

History: En. Sec. 3, Ch. 225, L. 1919; re-en. Sec. 4159, R. C. M. 1921.

4160. Application for license. The application for such license shall be filed not less than one month prior to the granting of said license, and shall be accompanied by the affidavits of two or more persons who have known the applicant or the chief officer thereof, if the applicant is a corporation, for five years, stating that the said applicant or officer thereof is a person of good moral character.

History: En. Sec. 4, Ch. 225, L. 1919; re-en. Sec. 4160, R. C. M. 1921.

4161. Bond of applicant. The county treasurer of each county shall require such person to file with his application for a license a bond in due form to the state of Montana, in the penal sum of three thousand dollars, with two or more sufficient securities, and conditioned that the obligor will not violate any of the duties, terms, conditions, provisions, or requirements of this act.

History: En. Sec. 5, Ch. 225, L. 1919; re-en. Sec. 4161, R. C. M. 1921.

4162. Action upon bond. If any person shall be aggrieved by the misconduct of any such licensed person, such person may maintain an action in his own name upon the bond of said employment agent in any court having jurisdiction of the amount claimed.

History: En. Sec. 6, Ch. 225, L. 1919; re-en. Sec. 4162, R. C. M. 1921.

4163. Registers to be kept by licensed persons. It shall be the duty of every such licensed person to keep a register, approved by the county treasurer, in which shall be entered the date of every application for employment; the name and address of the applicant; the amount of the fee received. Such licensed person shall also enter in a separate register approved by the county treasurer the name and address of every applicant for help, the date of such application, the kind of help requested, the names of the persons sent, with the designation of the one employed, the amount of the fee received, and the rate of wages agreed upon. The aforesaid registers of applicants for employment and for help shall be open during office hours to inspection by the county treasurer.

History: En. Sec. 7, Ch. 225, L. 1919; re-en. Sec. 4163, R. C. M. 1921.

4164. Fees which may be charged applicants—repayment of fees. The fees charged applicants for any employment shall not exceed the sum of

three dollars. In case the applicant, through no fault, neglect, or refusal of his own, shall not obtain help or employment through such agency, then such licensed person shall, on demand, repay the full amount of the said fee, allowing five days' time to determine the fact of the applicant's failure to obtain help or employment.

History: En. Sec. 8, Ch. 225, L. 1917; re-en. Sec. 4164, R. C. M. 1921.

4165. Receipts to be delivered to applicants for employment and help. It shall be the duty of such licensed person to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated the name of said applicant, the date and amount of the fee, and the purpose for which it is paid, and to every applicant for help a receipt stating the name and address of said applicant, the date and amount of the fee, and the kind of help to be provided. Every such receipt shall have printed on the back thereof a copy of this section.

History: En. Sec. 9, Ch. 225, L. 1919; re-en. Sec. 4165, R. C. M. 1921.

4166. Gifts or other things of value in lieu of fees prohibited. No such licensed person shall receive or accept any valuable thing or gift as a fee in lieu thereof, and no fee shall be accepted by such licensed person for any other purpose, directly or indirectly, by any pretense or subterfuge employed to evade the interest or purpose of this section, except as herein provided. No such licensed person shall divide fees with contractors or other employers to whom applicants for employment are sent.

History: En. Sec. 10, Ch. 225, L. 1919; re-en. Sec. 4166, R. C. M. 1921.

4167. Applicants for employment entitled to card—contents of card. Every such licensed person shall give to each applicant for employment a card containing the name and address of such employment agency, and the written name and address of the person to whom the applicant is sent for employment.

History: En. Sec. 11, Ch. 225, L. 1919; re-en. Sec. 4167, R. C. M. 1921.

4168. Copies of act to be posted where. Every such licensed person shall post in a conspicuous place in each room of such agency a plain and legible copy of this act.

History: En. Sec. 12, Ch. 225, L. 1919; re-en. Sec. 4168, R. C. M. 1921.

4169. Duty of licensed persons when sending contract laborers outside of county. Whenever such licensed person or any other acting for him agrees to send one or more persons to work as contract laborers in any one place outside the county in which such agency is located, the said licensed person shall file with the county treasurer, within five days after the contract is made, a statement containing the following items: Name and address of the employer, name and address of the employee, nature of work to be performed, hours of labor, wages offered, designation of the persons employed, and terms of transportation.

History: En. Sec. 13, Ch. 225, L. 1919; re-en. Sec. 4169, R. C. M. 1921.

4170. Female applicants not to be sent to questionable places. No such licensed person shall send or cause to be sent any female help as servants or inmates to any questionable place, or place of bad repute,

house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, the character of which such licensed person could have ascertained upon reasonable inquiry.

History: En. Sec. 14, Ch. 225, L. 1919; re-en. Sec. 4170, R. C. M. 1921.

4171. False and fraudulent advertising—name and address of agency to appear on advertising matter. No such licensed person shall publish or cause to be published any false or fraudulent notice or advertisement; all advertisements of such employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall contain the name and address of such employment agency, and no such licensed person shall give any false information, or make any false promise concerning employment to any applicant who shall register for employment or help.

History: En. Sec. 15, Ch. 225, L. 1919; re-en. Sec. 4171, R. C. M. 1921.

4172. Violation of act a misdemeanor—penalty. Any violation of the provisions of this act shall constitute a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a period of not more than ninety days, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 225, L. 1919; re-en. Sec. 4172, R. C. M. 1921.

CHAPTER 322

REGULATION OF WAGE BROKERS

- Section 4173. Wage brokers to procure license and give bond.
 4174. Issuance of license—terms and amount thereof.
 4175. Wage broker defined.
 4176. Restrictions upon assignment of wages or salary.
 4177. Interest on loan—amount and computation.
 4178. Wife must join in assignment of wages—acknowledgment.
 4179. Assignments invalid without notice to employer—filing assignments.
 4180. Assignment to be considered a loan.
 4181. Violation of act constitutes misdemeanor—penalties.
 4182. Note, instruments; or assignment contrary to act void.

4173. Wage brokers to procure license and give bond. From and after the passage of this act, no person, company, corporation, or association shall establish or conduct the business of wage broker within the state of Montana, unless such person, company, corporation, or association shall have first procured a license from the proper authorities as herein-after provided, and shall have executed a bond in such sum as said authorities may require for the faithful carrying out of the provisions of this act, and of the ordinances of any town or city in which such business may be carried on.

History: En. Sec. 1, Ch. 56, L. 1911; re-en. Sec. 4173, R. C. M. 1921.

Operation and Effect

In an action by a bank as assignee of a contractor for a balance due on a contract assigned as security for a loan, an allegation in the answer that the assignment had not been acknowledged nor filed with the county clerk as required by sections 4173-4182, regulating the business of wage

brokers, was properly stricken, it appearing affirmatively that the assignor was neither a wage-earner nor an employee but a contractor, and therefore the assignee was not a wage broker. *Security State Bank of Roy v. Melchert*, 67 M 535, 539, 216 P 340.

References

Costello v. Great Falls Iron Works, 59 M 417, 418, 196 P 982.

4174. Issuance of license—terms and amount thereof. The board of county commissioners of any county in this state, or, in case said business be carried on in any incorporated city or town, the city council or board of trustees of said city or town, may in their discretion, from time to time, grant licenses to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum therefor, and upon such terms and conditions as the said board of county commissioners or city council or board of trustees shall by resolution or ordinance require.

History: En. Sec. 2, Ch. 56, L. 1911; re-en. Sec. 4174, R. C. M. 1921.

4175. Wage broker defined. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly to any employee or wage-earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage-earner, shall be deemed to be a wage broker within the meaning of this act.

History: En. Sec. 3, Ch. 56, L. 1911; re-en. Sec. 4175, R. C. M. 1921.

Operation and Effect

One who parts with money, either directly or indirectly, in consideration of the assignment of wages, is a wage broker

within the meaning of this section. *Costello v. Great Falls Iron Works*, 59 M 417, 418, 196 P 982.

References

Security State Bank of Roy v. Melchert, 67 M 535, 539, 216 P 340.

4176. Restrictions upon assignment of wages or salary. No assignment of his or her wages or salary by any employee or wage-earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned.

History: En. Sec. 4, Ch. 56, L. 1911; re-en. Sec. 4176, R. C. M. 1921.

4177. Interest on loan—amount and computation. No wage broker shall ask, demand, or receive, either as compensation or interest, or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage-earner in excess of twelve per cent. per annum, and said compensation or rate of interest shall be computed upon the amount actually advanced to and received by the employee or wage-earner, and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

History: En. Sec. 5, Ch. 56, L. 1911; re-en. Sec. 4177, R. C. M. 1921.

4178. Wife must join in assignment of wages—acknowledgment. No assignments of his wages or salary to a wage broker by a married man, who shall have a wife residing in this state, shall be valid or enforceable without the consent of his wife, evidenced by her signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments, and no wage broker or person connected with him, directly or indirectly, shall be authorized to take any such acknowledgments.

History: En. Sec. 6, Ch. 56, L. 1911; re-en. Sec. 4178, R. C. M. 1921.

4179. Assignments invalid without notice to employer—filing assignments. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within one day from the date of its execution; and all assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

History: En. Sec. 7, Ch. 56, L. 1911; re-en. Sec. 4179, R. C. M. 1921.

4180. Assignment to be considered a loan. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage-earner shall be held and considered a loan, in the sum of the amount actually paid to and received by such employee or wage-earner, and shall be subject to all the provisions of this act.

History: En. Sec. 8, Ch. 56, L. 1911; re-en. Sec. 4180, R. C. M. 1921.

4181. Violation of act constitutes misdemeanor—penalties. Any person, company, corporation or association, and any officer, member, agent or employee thereof violating any or either of the provisions of sections 4173 to 4180, both inclusive, shall be deemed guilty of a misdemeanor, and upon conviction shall be liable to a fine in the sum of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), for each offense or to imprisonment in the county jail for a period not to exceed ninety (90) days or both, and in addition thereto the debt and accrued interest thereon shall be discharged and the security shall be void.

History: En. Sec. 9, Ch. 56, L. 1911; re-en. Sec. 4181, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1929.

4182. Note, instrument, or assignment contrary to act void. Any note, bill, or other evidence of indebtedness, and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this act, shall be void as against the creditors of the assignor or transferer.

History: En. Sec. 10, Ch. 56, L. 1911; re-en. Sec. 4182, R. C. M. 1921.

CHAPTER 323

REGULATION OF COMMISSION MERCHANTS

Section 4183. Commission merchants to acknowledge receipt of property.

4184. Statement to consignor on sale of property.

4185. Penalties for violation of act.

4183. Commission merchants to acknowledge receipt of property. Any person or persons doing business in this state as commission merchants, or who shall receive from any person of this state, agricultural or horticultural products or farm produce raised in this state to sell on commission, shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

History: En. Sec. 1, Ch. 2, L. 1909; re-en. Sec. 4183, R. C. M. 1921.

4184. Statement to consignor on sale of property. Whenever any commission merchant or person receiving any property as mentioned in

the preceding section, shall sell the same or twenty-five per centum thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold and the price received therefor.

History: En. Sec. 2, Ch. 2, L. 1909; re-en. Sec. 4184, R. C. M. 1921.

4185. Penalties for violation of act. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of this act, or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 2, L. 1909; re-en. Sec. 4185, R. C. M. 1921.

CHAPTER 324

REGULATION OF PAWNBROKERS AND JUNK DEALERS

- Section 4186. Interest pawnbrokers may receive.
4187. Search warrant may issue.
4188. Service of.
4189. Delivery of property to claimant—bond.
4190. Conditions of bond.
4191. Must keep register.
4192. Penalties.

4186. Interest pawnbrokers may receive. No person must carry on the business of pawnbroker or junk dealer by receiving goods pawned, or in pledge for loans, at any rate of interest above ten per cent. per annum, without first obtaining a license. There must be no other or greater amount received by any pawnbroker or junk dealer, his employees or agents, for interest, commission, discount, storage, or caring for property pledged, than the rate of three per cent. per month.

History: This section first enacted in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3310, Pol. C. 1895; appeared as Sec. 2105, Rev. C. 1907; re-en. Sec. 4186, R. C. M. 1921.

4187. Search warrant may issue. Whenever any person makes oath before a magistrate that any property belonging to him has been embezzled or taken without his consent, and that he has reason to believe or suspect, and does suspect, that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken, and if found, to seize and bring the same before him.

History: First enacted in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3311, Pol. C. 1895; re-en. as Sec. 2106, Rev. C. 1907; re-en. Sec. 4187, R. C. M. 1921.

4188. Service of. The officer to whom said warrant is directed and delivered must execute the same, and proceed in the same manner as in case of other search-warrant.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3312, Pol. C. 1895; re-en. as Sec. 2107, Rev. C. 1907; re-en. Sec. 4188, R. C. M. 1921.

4189. Delivery of property to claimant—bond. Upon any property seized by virtue of such warrant being brought before the magistrate who

issued the same, he must cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as hereinafter directed; and if such bond be not executed within forty-eight hours, the magistrate must cause the said property to be delivered to the person from whose possession it was taken.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3313, Pol. C. 1895; re-en. Sec. 2108, Rev. C. 1907; re-en. Sec. 4189, R. C. M. 1921.

4190. Conditions of bond. The bond must be in a penal sum equal to double the value of the property claimed, with two sureties approved by the magistrate in favor of the person from whose possession the property was taken, with a condition that the claimant will, on demand, pay all damage that may be recovered against him in any suit to be brought within twenty days from the date of such bond, by the pawnbroker or junk dealer from whose possession the property was taken.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3314, Pol. C. 1895; re-en. Sec. 2109, Rev. C. 1907; re-en. Sec. 4190, R. C. M. 1921.

4191. Must keep register. Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with the date of the pawning or purchasing, date when the article must be redeemed, with the name of the person by whom the same was pawned, or by whom purchased, and the amount loaned thereon or paid therefor; and in case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register the name of the purchaser, the time of the sale, and the price paid therefor; and the register must always be open to inspection and examination of any peace officer or other persons.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3315, Pol. C. 1895; re-en. Sec. 2110, Rev. C. 1907; re-en. Sec. 4191, R. C. M. 1921.

4192. Penalties. The penalties for a violation of any of the provisions of this chapter are provided for in sections 11184 to 11187 of the penal code.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R. C. M. 1921.

CHAPTER 325

STATE MANUFACTURE AND SALE OF PETROLEUM PRODUCTS

- Section 4192.1. Buying and selling of petroleum products, operating oil refineries declared public purpose.
4192.2. Purchasing agent may be authorized to buy and sell gasoline and petroleum products, when—use of equipment.
4192.3. Sales to be for cash.
4192.4. Accounts to be kept by purchasing agent—semi-annual reports.
4192.5. Disposal of proceeds.
4192.6. State subject to license taxes.

4192.1. Buying and selling of petroleum products, operating oil refineries declared public purpose. The state of Montana in the exercise of its sovereign and police powers declares that engaging on its part in the business of buying crude oil and of buying and selling gasoline, oils and lubricants, and of constructing, purchasing or leasing and operating oil

refineries, is a public purpose and is necessary for the good order, peace, safety, convenience and welfare of its people.

History: En. Sec. 1, Ch. 189, L. 1933.

4192.2. Purchasing agent may be authorized to buy and sell gasoline and petroleum products, when—use of equipment. The state purchasing agent is hereby granted authority, when so directed by the governor, attorney general and state treasurer, or a majority of them, to buy gasoline, oils and lubricants and to sell the same at wholesale and retain within the state, and to construct, purchase or lease and operate a refinery or refineries for the purpose of refining crude oil, including crude oil owned by the state and that purchased by him from others, and of manufacturing and selling gasoline, oils and lubricants, provided, however, that the authority herein granted, or any thereof, shall not be exercised except when the retail prices exacted by other dealers are found by such officers, or a majority of them, to be unreasonable and excessive. All tanks and other storage facilities, and all lands, platforms and unloading equipment now or hereafter owned or leased by the state, and not used exclusively for other purposes, may be used in conducting such business.

History: En. Sec. 2, Ch. 189, L. 1933.

4192.3. Sales to be for cash. All sales of gasoline, oils and lubricants made under the authority herein granted shall be for cash only and at no time shall such sales be made at a loss to the state.

History: En. Sec. 3, Ch. 189, L. 1933.

4192.4. Accounts to be kept by purchasing agent—semi-annual reports. The state purchasing agent shall keep an accurate account of the quantities of crude oil, gasoline, oils and lubricants so purchased by him and the amounts paid therefor, and of all sales of gasoline, oils and lubricants, whether purchased or manufactured, made at any established station or otherwise, and the receipts therefrom, and the cost of erecting, buying or leasing such refinery or refineries, together with all expenses incident to the business, and he shall semi-annually make a detailed report of all things connected with such business to the governor, attorney general and state treasurer.

History: En. Sec. 4, Ch. 189, L. 1933.

4192.5. Disposal of proceeds. Moneys received from sales of products named herein shall be deposited with the state treasurer in a special fund known as a gasoline marketing fund and disbursements therefrom requisitioned from the state purchasing agent to be approved by the state board of examiners and the state auditor should draw therefrom.

History: En. Sec. 5, Ch. 189, L. 1933.

4192.6. State subject to license taxes. If the state of Montana shall enter the business contemplated by this act, it shall be subject to and shall pay all license taxes imposed by state or federal law, upon persons and corporations engaged in like business in this state.

History: En. Sec. 8, Ch. 189, L. 1933.

4193. Repealed—Chapter 109, laws of 1927.

CHAPTER 326

REGULATION OF SALE OF GASOLINE, KEROSENE, AND OILS

- Section 4193.1 Discrimination in price of petroleum products, penalty for—defenses—
vendor to prove justification of price.
4193.2. “Standard petroleum product” defined.
4193.3. Purpose of act—construction.
4193.4. Investigation of complaints—revocation of license for violations.
4193.5. County attorney to prosecute reported violations or explain failure.
4193.6. Penalty for violations.
4193.7. Liability of violators for civil and exemplary damages.

4193.1. Discrimination in price of petroleum products, penalty for—defenses—vendor to prove justification of price. Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana, and engaged in the selling of any standard petroleum product, that shall demand or collect from any person or customer a higher price for any standard petroleum product in one part of the state of Montana than the price being demanded or collected at substantially the same time by such person, firm, company, association or corporation, from other persons or customers in another part of the state of Montana or in the nearest adjoining state for a like article of standard petroleum product shall be guilty of discrimination which is hereby declared to be a fraud, and the agents or officers of such person, firm, company, association, or corporation participating, guilty of a misdemeanor, provided, however, in the trial of an action under the provisions of this act, in the determination of the justification of the price demanded or collected by a person, firm, company, association, or corporation, charged with a violation of the provisions of this act, transportation, quantity of sales, emergencies, cost of doing business, or similar differences under the respective conditions may be offered as a matter of defense or justification for the differences in price demanded or collected. When competent evidence is offered, in the trial of any action under this act, of a demand for or the receipt of a higher price for any standard petroleum product in the state of Montana by any person, firm, company, association or corporation, than such person, firm, company, association or corporation demanded, collected or received at substantially the same time for the same or a similar article of standard petroleum product in another part of the state of Montana or in the nearest adjoining state, the burden of proof shall then be upon such person, firm, company, association or corporation, or agents or officers, on trial to prove that the difference in the price demanded or collected was justified.

History: En. Sec. 1, Ch. 111, L. 1935.

4193.2. “Standard petroleum product” defined. The term “Standard Petroleum Product” as used herein refers to and includes gasoline, fuel oil, distillates, greases and lubricating oils.

History: En. Sec. 2, Ch. 111, L. 1935.

4193.3. Purpose of act—construction. This act is intended to compel persons, firms, companies, associations and corporations, doing business in the state of Montana, and engaged in the selling of and dealing in standard petroleum products, to treat all customers in one part of the state of Montana on an equal with all customers in other parts of the state of Montana

or in the nearest adjoining state, and to promote the uniform application of the law of the state of Montana providing a tax on all gasoline used by motor vehicles when traveling over the public highways, and this act shall be liberally construed to accomplish those purposes.

History: En. Sec. 3, Ch. 111, L. 1935.

4193.4. Investigation of complaints—revocation of license for violations.

If complaint shall be made to the attorney general that any person, firm, company, association or corporation is guilty of discrimination as defined by this act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of such person, firm, company, association or corporation as the case may be, and to permanently enjoin such person, firm, company, association or corporation from doing business in this state, and if, in such action, the court shall find that such person, firm, company, association or corporation is guilty of discrimination as defined by this act, such court shall annul the charter or revoke the permit or license of such person, firm, company, association or corporation, and may permanently enjoin it or them from transacting business in this state.

History: En. Sec. 4, Ch. 111, L. 1935.

4193.5. County attorney to prosecute reported violations or explain failure. If any person shall present to the county attorney of any county in the state of Montana, in which county such discriminatory acts of any person, firm, company, association, or corporation shall have been committed, a sworn written statement of the price paid, the date and the parties selling and buying, and reasonably reliable information of the price demanded or collected by such person, firm, company, association or corporation, for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by such person, firm, company, association or corporation, then it shall be the duty of such county attorney to promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of his reasons for not commencing and prosecuting an action under this act.

History: En. Sec. 4-A, Ch. 111, L. 1935.

4193.6. Penalty for violations. Any person, firm, company, association or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punishable by a fine of not exceeding five hundred dollars (\$500.00).

History: En. Sec. 5, Ch. 111, L. 1935.

4193.7. Liability of violators for civil and exemplary damages. In addition to the penalty above prescribed, any customer of such person, firm, company, association or corporation may bring a civil action in any county in which such offending person, firm, company, association or corporation may be doing business, and recover therein not only actual damages for

violation of this act, but also exemplary damages for such reasonable sum as the jury may deem proper punishment for the unlawful practice of discrimination as herein defined.

History: En. Sec. 6, Ch. 111, L. 1935.

4194-4208. Repealed—Chapter 109, laws of 1927.

CHAPTER 327

REGULATION OF COMMERCIAL FERTILIZER

Section 4208.1.	Commercial fertilizer defined.
4208.2.	Statement required on moved fertilizer container.
4208.3.	Statement required on unmixed fertilizer—minimum phosphate content of acid phosphate.
4208.4.	Minimum nitrogen, potassium and phosphate contents of mixed fertilizer.
4208.5.	Registration and license of fertilizers—fee.
4208.6.	Sample for tests and analyses.
4208.7.	Method of taking and preserving samples—manner of analyzing.
4208.8.	Notice of deficiencies shown by analyses—decision in case of disagreement.
4208.9.	Report of analyses—expense, how paid.
4208.10.	Report of chemist concerning analyses, fees and expenditures—disposal of surplus license fees.
4208.11.	Penalties for violations—negligible deficits.

4208.1. Commercial fertilizer defined. The term “commercial fertilizer” shall be held to include any and every substance imported, manufactured, prepared or sold for fertilizing, manurial, soil enriching or soil corrective purposes, the retail price of which is ten dollars (\$10.00), or more per ton; provided, however, that this act shall not apply to any stocks that may be in the hands of dealers in the state of Montana at the time this act goes into effect, nor shall it apply to animal manure which has not been artificially treated, or to materials sold to each other by manufacturers or importers.

History: En. Sec. 1, Ch. 153, L. 1931; amd. Sec. 1, Ch. 67, L. 1935.

4208.2. Statement required on mixed fertilizer container. Each lot or parcel of mixed commercial fertilizer sold, offered or exposed for sale, or distributed within this state shall have on each package or container, in a conspicuous place on the outside, a legible or plainly printed statement in the English language, clearly and truly certifying:

(a) Weight. The net weight of the contents of the package, lot or parcel.

(b) Name. The name, brand, or trade mark.

(c) Manufacturer. The name and principal address of the manufacturer or person responsible for placing the commodity on the market.

(d) Nitrogen. The minimum percentage and source of nitrogen in available form.

(e) Potash. The minimum percentage and source of potash K_2O , soluble in distilled water.

(f) Phosphoric acid. The minimum percentage and source of available phosphoric acid P_2O_5 .

No other statement of chemical compounds, except as above, shall be placed on any such container.

History: En. Sec. 2, Ch. 153, L. 1931; amd. Sec. 2, Ch. 67, L. 1935.

4208.3. Statement required on unmixed fertilizer—minimum phosphate content of acid phosphate. All bags or containers of unmixed materials, such as nitrate of soda, sulphate of ammonia, sulphates and muriates of potash, limestone, gypsum or other fertilizer or soil correcting substances shall have stamped thereon a plain statement in the English language, of the name of said material; the guaranteed per cent. of the element or elements contained which give such commodity its value as a fertilizer; the net weight of the contents of the package, lot or parcel; the name, brand or trade mark, and the name and principal address of the manufacturer or person responsible for placing the commodity on the market. No acid phosphate shall be sold or offered for sale in the state of Montana which shall contain less than sixteen per centum (16%) total available P_2O_5 .

History: En. Sec. 3, Ch. 153, L. 1931; amd. Sec. 3, Ch. 67, L. 1935.

4208.4. Minimum nitrogen, potassium and phosphate content of mixed fertilizer. No mixed fertilizer shall be sold or offered for sale in the state of Montana which shall contain less than sixteen per centum (16%) total nitrogen, P_2O_5 and K_2O taken collectively. The P_2O_5 must be available, the K_2O must be soluble in distilled water, and the nitrogen must not include inert forms such as untreated leather, hair, peat and the like.

History: En. Sec. 4, Ch. 154, L. 1931.

4208.5. Registration and license of fertilizers—fee. Before any commercial fertilizer is sold or offered for sale within the state of Montana, the manufacturer, importer or party who causes it to be sold, or offered for sale, shall separately register with the commissioner of agriculture of the state of Montana, each and every brand, and also each different mixed or unmixed commercial fertilizer which he offers for sale under the same brand, and shall pay annually to said commissioner, before offering such product for sale, a license fee of twenty-five dollars (\$25.00), for each and every brand of commercial fertilizer so registered and offered for sale in this state, and shall at the same time file with said commissioner a certified copy of the statement and certificate referred to in sections 4208.2 and 4208.3, and shall also deposit with said commissioner a sealed glass jar containing not less than two (2) pounds of such fertilizer, with an affidavit that it is a fair sample of the article thus to be sold, or offered for sale. The said commissioner of agriculture may refuse to register materials whose value in improving soil conditions cannot be established by experimental evidence.

History: En. Sec. 5, Ch. 153, L. 1931; amd. Sec. 4, Ch. 67, L. 1935.

4208.6. Sample for tests and analyses. The chemist of the Montana agricultural experiment station shall at least once each year obtain at least one (1) sample of each brand of commercial fertilizer offered for sale in this state, to make proper analyses and tests to determine (1) the net weight of the contents of each package examined; (2) the percentage of nitrogen in available form; (3) the percentage of potash K_2O , soluble in distilled water, and (4) the percentage of available phosphoric acid P_2O_5 , and to inspect labels on each parcel or container, and determine whether or not they conform to the provisions of this act.

History: En. Sec. 6, Ch. 153, L. 1931; amd. Sec. 5, Ch. 67, L. 1935.

4208.7. Method of taking and preserving samples—manner of analyzing. All samples taken hereunder by the chemist of the Montana agricultural experiment station, or his agent, must be composites of equal portions taken from at least five (5) original packages in such manner as to be truly representative of the contents of the package. Such samples shall be thoroughly mixed and immediately placed in containers which exclude air. Analyses of such samples shall be made in accordance with the methods of the association of official agricultural chemists.

History: En. Sec. 7, Ch. 153, L. 1931; amd. Sec. 6, Ch. 67, L. 1935.

4208.8. Notice of deficiencies shown by analyses—decision in case of disagreement. In case of the analyses of samples made by the chemist of the experiment station, or his agent, indicates deficiencies below guaranteed analysis in the fertilizer examined, he shall immediately notify the manufacturer or seller of such fertilizer of the results of his analyses. The manufacturer or seller of such fertilizer may, upon request, obtain from the chemist a portion of the samples in question. If he fails to agree with the analyses of the chemist of the experiment station, he may request an umpire who shall be one (1) of the list of not less than three (3) public chemists of recognized ability in fertilizer analysis, who shall be named by the chemist of the experiment station. Such umpire analyses shall be made at the expense of the manufacturer or seller requesting the same. In case the umpire shall agree more closely with the chemist of the experiment station, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the manufacturer or seller, then the figures of the manufacturer or seller shall be considered correct.

History: En. Sec. 8, Ch. 153, L. 1931.

4208.9. Report of analyses—expense, how paid. All such analyses of commercial fertilizer, as required by this act, shall be reported to the commissioner of agriculture of the state of Montana, and all expenses for such analyses, together with supplies of all kinds needed for making the same, and also the traveling and other expenses incurred in collecting samples, as required herein, shall be paid out of the fund arising from the license fees provided for in section 4208.5.

History: En. Sec. 9, Ch. 153, L. 1931.

4208.10. Report of chemist concerning analyses, fees and expenditures—disposal of surplus license fees. The chemist of the Montana agricultural experiment station shall publish annually a bulletin containing a correct statement of all analyses made, and of certificates filed with the commissioner of agriculture, together with a statement of all moneys received for license fees and expended for all purposes. Any surplus of license fees remaining on hand at the close of the fiscal year shall be placed to the credit of the Montana agricultural experiment station.

History: En. Sec. 10, Ch. 153, L. 1931; amd. Sec. 7, Ch. 67, L. 1935.

4208.11. Penalties for violations—negligible deficits. Any corporation, co-partnership or person who shall sell, or offer for sale, any commercial fertilizer in this state without first having complied with the provisions of

this act, or who shall attach or cause to be attached to any bag or sack or other container of such fertilizer an analysis stating that it contains a larger per cent of any one (1) or more of the constituents or ingredients named in this act than it really does contain shall be guilty of a misdemeanor and shall upon conviction thereof be fined not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00) for each offense, and such offender shall also be liable to the purchaser of such fertilizer for all damages sustained by said purchaser on account of said misrepresentation; provided, however, that for any deficit less than five per centum (5%) in weight, or any deficit less than five per centum (5%) in one (1) or more of the constituents or ingredients of such fertilizer the manufacturer or seller shall not be liable to any penalty, or for damages hereunder.

History: En. Sec. 11, Ch. 153, L. 1931.

CHAPTER 328

REGULATION OF SALE OF ENGINES AND MACHINERY

Section 4209. Computation of capacity of traction-engines—marking on engine.

4210. Inspection by state boiler inspectors—fees.

4211. Penalty for non-compliance with law.

4209. Computation of capacity of traction-engines—marking on engine.

The capacity or initial power of all traction-engines or machinery propelled or operated by gas, oil, or any product of oil, when sold or offered for sale within this state, must be computed and determined by the draw-bar horsepower; that is, the initial pulling power of such engines or machinery, and not otherwise; and such power or capacity shall be plainly engraved in figures with the letters "H. P." on a metallic templet or plate, which templet or plate shall, before such engine or machine is sold or offered for sale, be securely fastened thereto, in such manner and place and of sufficient size as to be easily seen and read. And all new engines or machinery named herein must be engraved or branded with the shop number, which shall be in some place easily observed.

History: En. Sec. 1, Ch. 125, L. 1913; re-en. Sec. 4209, R. C. M. 1921.

4210. Inspection by state boiler inspectors—fees. Any owner or lessee of any of the engines or machinery named in the preceding section shall have the right to call upon the state boiler inspector to inspect and determine the power and capacity of such engine or machinery, and it is the duty of the inspector to make such inspection when so requested. The fee for such inspection shall be five dollars when such engine or machinery is located within any incorporated city or town, and ten dollars when not located within any incorporated city or town, which fees shall be demanded and paid in advance; provided, that the inspector may select and determine the time of such inspection. When such inspection is completed, the inspector shall deliver to the party a certificate, showing the date of inspection, the description of the engine or machinery inspected, which may be by shop number and make, and the draw-bar horsepower thereof; provided, that the provisions of this act shall not apply to automobiles nor to railroad locomotives.

History: En. Sec. 2, Ch. 125, L. 1913; re-en. Sec. 4210, R. C. M. 1921.

4211. Penalty for non-compliance with law. Any person, firm or corporation, or copartnership or agent, who shall sell or offer for sale, or shall authorize or induce any other person to sell or offer for sale any of the engines or machinery named in section 4209 of this code, without having the same marked or labeled as provided in said section, or who shall misrepresent the capacity or initial horsepower or draw-bar horsepower of such engines or machinery, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars nor more than five hundred dollars, or imprisoned in the county jail not more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 125, L. 1913; re-en. Sec. 4211, R. C. M. 1921.

CHAPTER 329

MOTOR CLUB SERVICE CONTRACTS—REGULATION OF COMPANIES AND AGENTS

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4211.1. Terms defined. The following words and phrases, when used in this act shall, for the purpose of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context of the act clearly indicates that they shall have a different meaning;

“Commissioner.” The commissioner of insurance of the state of Montana or his assistants or deputies or other persons authorized to act for him.

“Company.” Any person, firm, copartnership, company, association or corporation engaged in selling, furnishing or procuring, either as principal or agent, for a consideration, motor club service as herein defined.

“Agent.” Whoever solicits the purchase of service contracts, as herein defined, or transmits for another any such contract or application therefor to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or of the renewal or continuance thereof.

“Towing Service.” Any act or acts by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

“Emergency Road Service.” Any act or acts by a company, as herein defined, consisting of the adjustment, repair or replacement of the equipment, tires or mechanical parts of any automobile so as to permit it to be operated under its own power.

“Bail Bond Service.” Any act or acts by a company, as herein defined, the purpose of which is to furnish or procure for any person accused of

violation of any law of this state a cash deposit, bond or other undertaking required by law in order that the accused might enjoy his personal freedom pending trial.

“Legal Service.” Any act or acts by a company, as herein defined, consisting of the hiring, retaining, engaging or appointing of an attorney or other person to give professional advice to or represent holders of service contracts with any such company in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use or maintenance of a motor vehicle.

“Discount Service.” Any act or acts by a company, as herein defined, resulting in the giving of special discounts, rebates or reductions of price on gasoline, oil, repairs, insurance, parts, accessories or service for motor vehicles, to holders of service contracts with any such company.

“Financial Service.” Any act or acts by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

“Buying and Selling Service.” Any act or acts of a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

“Theft Service.” Any act or acts by a company, as herein defined, the purpose of which is to locate, identify or recover a motor vehicle owned or controlled by the holder of a service contract with any such company which has been or may be stolen or to detect or apprehend the person guilty of such theft.

“Map Service.” Any act or acts by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

“Touring Service.” Any act or acts by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

“Motor Club Service.” The rendering, furnishing or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service and touring service, or any three or more thereof, as herein defined, to any person or persons in connection with the ownership, operation use or maintenance of a motor vehicle by such other person or persons in consideration of such other person or persons being or becoming a member or members of any company, rendering, procuring or furnishing the same, or being or becoming in any manner affiliated therewith, or being or becoming entitled to receive membership or other motor club service therefrom by virtue of any agreement or understanding with any such company.

“Service Contract.” Any agreement or understanding whereby any company, as herein defined, for a consideration promises to render, furnish or procure for any other person or persons, whether they be members of such company or otherwise, motor club service, as herein defined.

History: En. Sec. 1, Ch. 131, L. 1931.

4211.2. Companies and agents must be licensed. No company, nor any agent, as herein defined, doing business in this state shall execute, issue or deliver any service contract to any person or persons owning or operating motor vehicles without first having obtained a license from the commissioner as provided for in this act, nor shall any such company or agent collect or receive from any person or persons in advance of the execution, issuance or delivery of any such service contract any money or other thing of value upon any promise or agreement to execute, issue or deliver any such service contract, without first having obtained a license from said commissioner, as provided for in this act.

History: En. Sec. 2, Ch. 131, L. 1931.

4211.3. Requirements for license. (a). No license shall be issued by the commissioner until the company has filed with him the following:

1. A formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

2. A copy of the form of its contract;

3. A certified copy of its charter or articles of incorporation and its by-laws, if any;

4. A financial statement in such form and detail as the commissioner may require, executed on oath by its president or other principal officer;

5. A certificate from the state treasurer of the state of Montana that it has complied with section 4211.4 in all cases where a deposit of cash or a bond is required by this act;

6. A certificate from the corporation commissioner of the state of Montana, in the event it be a corporation, that it has complied with the corporation laws of said state.

(b). **Fee.** No license shall be issued by the commissioner until the company has paid to the commissioner one hundred dollars (\$100.00) as an annual license fee, or the pro rata portion thereof necessary to be paid to the end of the current calendar year from the date of the application for such license.

(c). **Examination.** No license shall be issued by the commissioner until the company has satisfied him by such examination as he may make and such evidence as he may require, in his discretion, that such company has complied with the laws of the state of Montana and that its management is trustworthy and competent.

History: En. Sec. 3, Ch. 131, L. 1931.

4211.4. Deposits required. No license shall be granted to a company as herein defined, except as hereinafter stated until it has deposited with the state treasurer of the state of Montana the sum of twenty-five thousand dollars (\$25,000.00) in cash or in lieu thereof a bond in a form prescribed by the commissioner payable to the state of Montana in the sum of twenty-five thousand dollars (\$25,000.00), with surety approved by the commissioner, conditioned upon the faithful performance of its service contracts and payment of any fines or penalties levied against it for failure to comply with this act; provided, however, that when any company, as herein defined, shall prove to the commissioner that it has been in continuous,

active operation in the state of Montana for a period of more than five (5) years immediately last past and has a paid membership of more than five thousand (5,000) members within the state of Montana, or that there are more than five thousand (5,000) holders of its service contracts within the state of Montana, and that it is being properly managed, is rendering to its members the services promised to them, and is financially responsible, no such cash deposit or bond shall be required while such company remains in such condition. The foregoing cash deposit or bond is not required in any instance as a penalty, but for the protection of the public only.

History: En. Sec. 4, Ch. 131, L. 1931.

4211.5. Expiration of license. Every license issued hereunder shall expire annually on January 1, of each year, unless sooner revoked or suspended, as hereinafter provided.

History: En. Sec. 5, Ch. 131, L. 1931.

4211.6. Revocation of license. If the commissioner shall, at any time for cause shown and after a hearing, determine that a company has violated any provision or provisions of this act, or that it is insolvent, or that its assets are less than its liabilities, or that it or its officers refuse to submit to an examination, or that it is transacting business fraudulently, or that its management or business methods are improper or hazardous to the holders of its service contracts, he shall thereupon revoke or suspend its license and shall give notice thereof to the public in such manner as he may deem proper.

History: En. Sec. 6, Ch. 131, L. 1931.

4211.7. Financial statement to be filed. Every company shall annually, on or before February 1 of each year, file with the commissioner a financial statement in such form and detail as he may prescribe, executed on oath by its president or other principal officer, showing its financial condition on December 31 of the preceding year.

History: En. Sec. 7, Ch. 131, L. 1931.

4211.8. Service contract must be filed with commissioner. No service contract shall be executed, issued or delivered in this state until a copy of the form thereof has been on file for thirty (30) days with the commissioner, unless before the expiration of said thirty (30) days he shall have approved the form in writing; nor shall any service contract be executed, issued or delivered at any time in this state if the commissioner notified the company, in writing, within said thirty (30) days, that in his opinion the form of the contract does not comply with the laws of this state, specifying the reasons therefor.

History: En. Sec. 8, Ch. 131, L. 1931.

4211.9. Contracts must be in duplicate. Every service contract, executed, issued or delivered in this state shall be made in duplicate, and shall be signed by the company issuing the same, or by its duly authorized agent, and by the party purchasing the same, and one copy thereof shall be kept by said company, and the other copy shall be delivered to the party purchasing the same.

History: En. Sec. 9, Ch. 131, L. 1931.

4211.10. Form of contract. No service contract shall be executed, issued or delivered in this state unless it contains the following;

- (a) The exact corporate or other name of the company;
- (b) The exact location of its home office and of its usual place of business in this state, giving street number and city;
- (c) A provision that the contract may be canceled at any time by either the company or the holder, and that the holder shall, if he has actually paid the consideration, thereupon be entitled to the unused portion of the consideration paid for such contract, calculated on a pro rata basis without any deductions;
- (d) A provision plainly specifying the services promised and that the holder shall not be required to pay any sum for any services specified in the contract in addition to the amount specified in the contract, and further specifying the territory wherein such services are to be rendered, and the date when such service shall commence.

History: En. Sec. 10, Ch. 131, L. 1931.

4211.11. Companies must be licensed. No person shall solicit or aid in the solicitation of another person to purchase a service contract issued by a company not duly licensed under this act.

History: En. Sec. 11, Ch. 131, L. 1931.

4211.12. Contract must not be misrepresented. No company, and no officer or agent thereof, shall orally or in writing misrepresent the terms, benefits or privileges of any service contract issued or to be issued by it.

History: En. Sec. 12, Ch. 131, L. 1931.

4211.13. Contracts binding on company although not complying with act. Any service contract made, issued or delivered contrary to any provision of this act shall nevertheless be valid and binding on the company.

History: En. Sec. 13, Ch. 131, L. 1931.

4211.14. Act shall not apply—when. Nothing in this act shall apply to a duly authorized attorney at law acting in the usual course of his profession, nor to any insurance company, bonding company, or surety company, now or hereafter duly and regularly licensed and doing business as such under the laws of the state of Montana.

History: En. Sec. 14, Ch. 131, L. 1931.

4211.15. Penalty for violation. If any person shall violate the provisions of this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 131, L. 1931.

CHAPTER 330

STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES

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4214.	Division of the yard.
4215.	Rod, mile, and chain.

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- 4221. Unit of solid measure.
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- 4262. Penalty for violation of act.
- 4263. Sealers ex-officio deputy sheriffs—powers.
- 4264. Disposition of fines.

4212. What are standards. The weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, are the lawful standard weights and measures of the state.

History: En. Sec. 3120, Pol. C. 1895; re-en. Sec. 2009, Rev. C. 1907; re-en. Sec. 4212, R. C. M. 1921.

4213. Unit of extension. The standard yard is the unit or standard measure of length and surface from which all other measures of extension, whether lineal, superficial, or solid, are derived and ascertained.

History: En. Sec. 3121, Pol. C. 1895; re-en. Sec. 2010, Rev. C. 1907; re-en. Sec. 4213, R. C. M. 1921. Cal. Pol. C. Sec. 3210.

4214. Division of the yard. The yard is divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; for measures of cloths and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths.

History: En. Sec. 3122, Pol. C. 1895; re-en. Sec. 2011, Rev. C. 1907; re-en. Sec. 4214, R. C. M. 1921. Cal. Pol. C. Sec. 3211.

4215. Rod, mile, and chain. The rod, pole, or perch contains five and a half yards, and the mile one thousand seven hundred and sixty yards; the chain for measuring land is twenty-two yards long, and divided into one hundred equal parts, called links.

History: En. Sec. 3123, Pol. C. 1895; re-en. Sec. 2012, Rev. C. 1907; re-en. Sec. 4215, R. C. M. 1921. Cal. Pol. C. Sec. 3212.

4216. Acre. The acre for land measure must be measured horizontally, and contains ten square chains, and is equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

History: En. Sec. 3124, Pol. C. 1895; re-en. Sec. 2013, Rev. C. 1907; re-en. Sec. 4216, R. C. M. 1921. Cal. Pol. C. Sec. 3213.

4217. Unit of weights. The standard avoirdupois and troy weights are the units of standards of weight from which all other weights are derived and ascertained.

History: En. Sec. 3125, Pol. C. 1895; re-en. Sec. 2014, Rev. C. 1907; re-en. Sec. 4217, R. C. M. 1921. Cal. Pol. C. Sec. 3214.

4218. Division of a pound. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundred-weight consists of one hundred avoirdupois pounds and twenty hundred-weight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound.

History: En. Sec. 3126, Pol. C. 1895; re-en. Sec. 2015, Rev. C. 1907; re-en. Sec. 4218, R. C. M. 1921. Cal. Pol. C. Sec. 3215.

4219. Unit of Liquid measure. The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained.

History: En. Sec. 3127, Pol. C. 1895; re-en. Sec. 2016, Rev. C. 1907; re-en. Sec. 4219, R. C. M. 1921. Cal. Pol. C. Sec. 3216.

4220. Barrel and hogshead. The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

History: En. Sec. 3128, Pol. C. 1895; re-en. Sec. 2017, Rev. C. 1907; re-en. Sec. 4220, R. C. M. 1921. Cal. Pol. C. Sec. 3217.

4221. Unit of solid measure. The standard half-bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained.

History: En. Sec. 3129, Pol. C. 1895; re-en. Sec. 2018, Rev. C. 1907; re-en. Sec. 4221, R. C. M. 1921. Cal. Pol. C. Sec. 3218.

4222. Division of the half-bushel. The peck, half-peck, quarter-peck, quart, and pint measure for measuring commodities other than liquid are derived from the half-bushel by successively dividing that measure by two.

History: En. Sec. 3130, Pol. C. 1895; re-en. Sec. 2019, Rev. C. 1907; re-en. Sec. 4222, R. C. M. 1921. Cal. Pol. C. Sec. 3219.

4223. Division of capacity for commodities sold by heap measure. The measures of capacity for charcoal, ashes, marl, manure, Indian corn in the ear, fruit, and roots of every kind, and for all other commodities commonly sold by heap measure, are the half-bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plane and even bottom, and must be of the following diameters from outside to outside: The bushel, nineteen and a half inches; half-bushel, fifteen and a half inches, and the peck, twelve and a third inches.

History: En. Sec. 3131, Pol. C. 1895; re-en. Sec. 2020, Rev. C. 1907; re-en. Sec. 4223, R. C. M. 1921. Cal. Pol. C. Sec. 3220.

4224. Heap measure. All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure, by which the same are measured, to be the limit of the case of the cone, and said cone to be as high as the article will admit.*

History: En. Sec. 3132, Pol. C. 1895; re-en. Sec. 2021, Rev. C. 1907; re-en. Sec. 4224, R. C. M. 1921. Cal. Pol. C. Sec. 3221.

4225. Contracts construed. Contracts made within this state for work to be done, or for anything to be sold or delivered by weight or measure, must be construed according to the foregoing standards.

History: En. Sec. 3133, Pol. C. 1895; re-en. Sec. 2022, Rev. C. 1907; re-en. Sec. 4225, R. C. M. 1921. Cal. Pol. C. Sec. 3222.

4226. Standard ton and bushel. The standard ton consists of twenty hundred pounds, but a ton of mineral coal is expressed by the conventional quantity of twenty-six and one-third bushels of seventy-six pounds each. A bushel of the articles hereinafter named consists of the number of pounds affixed to each, to-wit:

	Pounds
Apples and pears	45
Beans	60
Bran	20
Carrots	50
Barley	48
Beets	50
Buckwheat	52
Coal, mineral	76
Corn, in the ear	70
Cornmeal	50
Lime, unslacked	80
Oats	32
Parsnips	50
Peas	60
Salt	50
Corn, shelled	56
Hay, per ton	2000
Malt	30
Onions	57
Potatoes	60
Rye	56

Seeds	
Blue-grass	14
Timothy	45
Hemp	44
Turnips	50
Clover	60
Hungarian grass	50
Flax	56
Wheat	60

History: En. Sec. 3134, Pol. C. 1895; amd. Sec. 1, p. 137, L. 1901; re-en. Sec. 2023, Rev. C. 1907; rep. Sec. 105, Ch. 120, L. 1911; re-en. Sec. 1, Ch. 14, L. 1921; re-en. Sec. 4226, R. C. M. 1921. Cal. Pol. C. Sec. 3223.

4227. Penalty for disregarding standard weights. Any person, persons, company, or corporation who shall demand, exact, or take more than the prescribed number of pounds per bushel or per ton as fixed by the provisions of the preceding section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 3134, Pol. C. 1895; amd. Sec. 1, p. 137, L. 1901; re-en. Sec. 2023, Rev. C. 1907; rep. Sec. 105, Ch. 120, L. 1911; re-en. Sec. 2, Ch. 14, L. 1921; re-en. Sec. 4227, R. C. M. 1921.

4228. Measurement of hay in the stack. Hereafter unless otherwise agreed to between the contracting parties, the following shall constitute the legal measurement for hay in stack in the state of Montana: Four hundred twenty-two cubic feet shall constitute a ton of clean, native, blue joint hay, after thirty days and up to three months settlement in stack; when the same shall have been in the stack three months, or over, three hundred and forty cubic feet shall be considered a ton. Five hundred twelve cubic feet shall constitute a ton of alfalfa or rough slough grass, after the same shall have been in the stack thirty days or more and up to one year. Four hundred and fifty cubic feet shall constitute a ton of clean timothy and clover, after the same shall have been in the stack thirty days or more and up to one year. As to all other kinds of hay, five hundred and twelve cubic feet shall constitute a ton after the same shall have been in the stack sixty days or more and up to one year. For making measurements of hay in stack, the following is hereby made the legal method of measurement, to-wit: The width and length of the stack shall be measured, and the distance from the ground against one side of the stack, to the ground against the other side of the stack, directly over and opposite, shall be taken in linear feet and inches, and then the width shall be subtracted from the measurement over the stack, as above indicated, the result divided by two, and the result so obtained multiplied by the width, and the result thus obtained multiplied by the length, which will give the number of cubic feet contained in the stack, and the tonnage shall thereupon be determined by dividing the total number of cubic feet by the number of cubic feet allowed under the provisions of this act for a ton.

History: En. Sec. 1, Ch. 91, L. 1907; re-en. Sec. 2024, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1921; re-en. Sec. 4228, R. C. M. 1921.

4229. Standard grades for hay. There is hereby created, fixed and established a standard grade for certain species of hay sold or offered for sale within the state of Montana; the standard grade of the hereinafter enumerated species of hay shall be as follows, provided, however, that if the federal grades on hay are established in conflict with any of the following grades, then the federal grade shall govern and become the Montana standard grade:

No. 1 timothy hay—Shall be timothy with not more than one-eighth ($1/8$ th) mixed with clover or other tame grasses, may contain some brown blades, properly cured, good color and sound.

No. 2 timothy hay—Shall be timothy not good enough for No. 1, not over one-fourth ($1/4$ th) mixed with clover or other tame grasses, fair color and sound.

No. 3 timothy hay—Shall include all timothy not good enough for other grades, and sound.

Light clover mixed hay—Shall be timothy mixed with clover. The clover mixture not over one-third ($1/3$ rd), properly cured, sound and of good color.

No. 1 clover mixed hay—Shall be timothy and clover mixed with at least one-half ($1/2$) timothy, good color, and sound.

No. 2 clover mixed hay—Shall be timothy and clover mixed, with at least one-fourth ($1/4$ th) timothy, and reasonably sound.

No. 1 clover hay—Shall be medium clover, not over one-twentieth ($1/20$ th) other grasses, properly cured, and sound.

No. 2 clover hay—Shall be clover, and sound and not good enough for No. 1.

Sample hay—Shall be sound, mixed, grassy, threshed, or hay not covered by other grades.

No grade hay—Shall include all hay, musty or in any way unsound.

Choice prairie hay—Shall be upland hay of bright, natural color, well cured, sweet, sound and may contain three per cent. weeds.

No. 1 prairie hay—Shall be upland and may contain one-quarter ($1/4$) midland, both of good color, well cured, sweet, sound and may contain eight (8) per cent. weeds.

No. 2 prairie hay—Shall be upland, of fair color, and may contain one-half ($1/2$) midland, both of good color, well cured, sweet, sound and may contain twelve and one-half ($12\frac{1}{2}$) per cent. of weeds.

No. 3 prairie hay—Shall include hay not good enough for other grades, and not caked.

No. 1 midland hay—Shall be midland hay of good color, well cured, sweet, sound and may contain three (3) per cent. weeds.

No. 2 midland hay—Shall be of fair color or slough hay of good color, and may contain twelve and one-half ($12\frac{1}{2}$) per cent. of weeds.

No. 1 mixed hay—Shall be hay of the different grasses, of good color, properly cured, sweet and sound.

No. 2 mixed hay—Shall be hay of the different grasses, not good enough for No. 1, of fair color, properly cured, sweet and sound.

No. 3 mixed hay—Shall be hay of the different grasses not good enough for the other grades, properly cured, sweet and sound.

Packing hay—Shall include all wild hay not good enough for other grades and not caked.

Sample prairie hay—Shall include all hay not good enough for other grades.

Choice alfalfa—Shall be reasonably fine, leafy alfalfa, of bright green color, properly cured, sound and sweet.

No. 1 alfalfa—Shall be reasonably coarse alfalfa, of a bright green color, or reasonably fine leafy alfalfa of a good color and may contain two (2) per cent. of foreign grasses, and if baled, five (5) per cent. of air-bleached hay on outside of bale allowed, but must be sound.

Standard alfalfa—May be of green color of coarse or medium texture, and may contain five (5) per cent. foreign matter; or it may be of green color, of coarse or medium texture, twenty (20) per cent. bleached, and two (2) per cent. foreign matter; or it may be of greenish cast, of fine stem and clinging foliage, and may contain five (5) per cent. foreign matter. All to be sound and sweet.

No. 2 alfalfa—Shall be any sound and sweet alfalfa, not good enough for standard, and may contain ten (10) per cent. foreign matter.

No. 3 alfalfa—May contain twenty-five (25) per cent. stack spotted hay, but must be dry and not contain more than eight (8) per cent. of foreign matter; or it may be of a green color and may contain fifty (50) per cent. of foreign matter; or it may be set alfalfa and may contain five (5) per cent. foreign matter.

No grade alfalfa—Shall include all alfalfa not good enough for No. 3.

Choice blue joint hay—Shall be reasonably fine, of bright green color, properly cured, with not more than one-eighth ($1/8$) of bright, sound timothy, well baled.

No. 1 blue joint hay—Shall be blue joint, with not more than one-eighth ($1/8$ th) of foreign grasses, bright green color, sound and well baled.

No. 2 blue joint hay—Shall be blue joint, not good enough for either choice or No. 1, may contain one-fourth ($1/4$ th) foreign grasses, and may contain twenty-five (25) per cent. stack spotted hay.

No. 1 millet hay—Shall be millet of good color, not over-ripe, properly cured and shall be sweet, sound and well baled.

No. 2 millet hay—Shall be millet of fair color, properly cured, sweet and well baled.

No. 3 millet hay—Shall be millet not good enough for the other grades, properly cured and well baled.

History: En. Sec. 1, Ch. 140, L. 1921; re-en. Sec. 4229, R. C. M. 1921.

4230. Sale of other than standard hay forbidden. It shall be unlawful for any person, firm or corporation to buy or offer to buy, for the purpose of resale within or without the state of Montana, hay the established grade of which is created, fixed, and established by the preceding sections, unless said hay meets the requirements provided for in said sections.

History: En. Sec. 2, Ch. 140, L. 1921; re-en. Sec. 4230, R. C. M. 1921; amd. Sec. 1, Ch. 84, L. 1935.

4230.1. Stack hay not contemplated in act. Nothing in this act shall apply to hay in the stack.

History: En. Sec. 2, Ch. 84, L. 1935.

4231. Repealed—Chapter 83, laws of 1935.

4232. Penalty for violation of act. Any person, firm or corporation who shall violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not less than ten dollars nor more than five hundred dollars.

History: En. Sec. 3, Ch. 140, L. 1921; re-en. Sec. 4232, R. C. M. 1921.

4233. Weights and measures inspected by county sealer. All vendors and traders in goods and merchandise, gold-dust and other articles of traffic, must have their balances, weights, and measures compared with the standard of their respective counties, and approved and marked by the county sealer, and if the same are found to be correct, to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect and marked "condemned."

History: En. Sec. 3135, Pol. C. 1895; re-en. Sec. 2025, Rev. C. 1907; re-en. Sec. 4233, R. C. M. 1921.

4234. Penalties. The penalties for using, marking, or stamping false weights and measures, or selling therewith, is provided for in sections 11428 to 11431 of the penal code.

History: En. Sec. 3136, Pol. C. 1895; re-en. Sec. 2026, Rev. C. 1907; re-en. Sec. 4234, R. C. M. 1921.

4235. State sealer of weights and measures—deputies. The secretary of state is hereby declared to be and is the ex-officio state sealer of weights and measures. The sealers of weights and measures of each municipal corporation are hereby declared to be deputy sealers of weights and measures of their respective municipal corporations. All deputy sealers of weights and measures shall receive no compensation other than such as may be provided by law, and shall be paid by the municipal corporation of which they are such officers.

History: En. Sec. 1, Ch. 34, L. 1911; amd. Sec. 1, Ch. 83, L. 1913; re-en. Sec. 4235, R. C. M. 1921.

NOTE.—Section 3454 of this code makes the state coal mine inspector ex-officio sealer of weights and measures.

4236. Supervision of inspection—maintenance of standards—county auditors appointed. (1) The state sealer of weights and measures shall have full authority and supervision over the inspectors of weights and measures, hereinafter provided for, and all deputy sealers of weights and measures appointed as such by any municipal corporation within the state. Said state sealer of weights and measures shall have general supervision over the weights and measures of the state. He shall take charge of the standards of weights and measures and shall procure at the expense of the state any weights and measures that may be necessary, and shall cause them to be kept and in no case removed from a fireproof vault in his office, except for the purpose of certification or repairs. He shall maintain said standards in good order and submit them once in ten years to the national bureau of standards for certification. He shall correct the

standards of the several counties, cities, and towns as often as he may deem necessary, and at least as often as once in five years, and where not otherwise provided by law he shall have general supervision of the weights and measures, or weighing and measuring devices of the state in use in the state.

(2) The county auditors, in counties of the first, second, third, fourth, and fifth class, and county clerks, in counties of the sixth, seventh, and eighth class, are hereby declared to be inspectors of weights and measures in their respective counties.

History: En. Sec. 2, Ch. 34, L. 1911; amd. Sec. 2, Ch. 83, L. 1913; amd. Sec. 1, Ch. 19, L. 1917; re-en. Sec. 4236, R. C. M. 1921.

4237. Bills and expenses, how allowed. The secretary of state, as ex-officio state sealer of weights and measures, shall be authorized to do and perform any and all acts by this act authorized. All bills and accounts of expense incurred by the state sealer of weights and measures shall be presented to and allowed by the state board of examiners, in the same manner as provided for other claims contracted for and in behalf of the state of Montana.

History: En. Sec. 3, Ch. 34, L. 1911; amd. Sec. 3, Ch. 83, L. 1913; amd. Sec. 2, Ch. 19, L. 1917; re-en. Sec. 4237, R. C. M. 1921.

4238. Duties of sealer of weights and measures as to inspection. Said state sealer of weights and measures, or his inspectors, shall visit the various counties, cities, and towns in the state, and in the performance of his duties, he, or his inspectors, may inspect weights and measures and balances which are used for buying or selling goods, wares, merchandise, or other commodities, and for public weighing, and shall, upon a written request of any citizen, first, or corporation, or educational institution of the state, test or calibrate weights and measures, weighing devices, or apparatus used as test standards in the state. He or his inspectors shall at least once annually test all scales, weights and measures used in checking the receipts or disbursements of supplies of every state institution, and he shall report in writing his findings to the executive officer of the institution concerned.

History: En. Sec. 4, Ch. 34, L. 1911; amd. Sec. 4, Ch. 83, L. 1913; re-en. Sec. 4238, R. C. M. 1921.

4239. Inspection and certificates. The state sealer of weights and measures, or the state deputy sealer of weights and measures, or inspectors of weights and measures, may, in the discharge of their duties, inspect weights and measures. It is hereby made the duty of the state sealer of weights and measures, or his inspectors, or the state deputy sealer of weights and measures, to at least once each year inspect all weights and measures, balances, measuring or weighing devices of different kinds throughout the state of Montana. The state sealer of weights and measures shall prepare a certificate of suitable size to be attached or affixed to all weights or measures or measuring devices so tested. Said certificate shall bear a facsimile signature of the state sealer of weights and measures, and shall be countersigned by the inspectors of weights and measures, or the state deputy sealer of weights and measures, or such inspectors of

weights and measures as may be designated by any municipal corporation. The certificate as prepared by the state sealer of weights and measures shall be numbered in consecutive order, and shall have printed or stamped upon such certificate the year, and shall be furnished to the inspector of weights and measures and to the sealer of weights and measures of any municipal corporation of the state, upon application therefor. The inspector of weights and measures of any municipal corporation shall pay to the state sealer of weights and measures for all such certificates so issued to him the sum equal to the actual cost of the number of certificates so received.

History: En. Sec. 5, Ch. 34, L. 1911; amd. Sec. 5, Ch. 83, L. 1913; re-en. Sec. 4239, R. C. M. 1921.

4240. Penalty for using weighing or measuring devices not inspected and certified. From and after the passage and approval of this act it shall be unlawful for any person or persons, firm, or copartnership, corporation, or association of persons engaged in the trade of buying or selling, purchasing or disposing of, or dealing in any merchandise or commodities to any person or persons in the state of Montana, to sell or purchase by weight or by measure, without first having had the weights and measures, scales, or measuring devices used by them for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a certification attached thereto by the state sealer of weights and measures, or by inspectors of weights and measures, or by sealers of weights and measures appointed by any municipal corporation in the state of Montana. Such certificate shall be attached or placed in a conspicuous place upon such weighing or measuring device. Any person or persons using any weight or measure, or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor and fined in the sum of not less than twenty-five dollars, nor more than three hundred dollars. Any person or persons who shall be deemed guilty of a second offense, as provided in this act, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each and every successive day any person or persons shall so use any weights and measures, scales, or other measuring devices shall be and is hereby declared to be a separate and distinct offense.

History: En. Sec. 6, Ch. 34, L. 1911; amd. Sec. 6, Ch. 83, L. 1913; re-en. Sec. 4240, R. C. M. 1921.

4241. Duty of tradesmen and public weighers to have scales adjusted. Every person or persons, firm, co-partnership, or corporation engaged in the trade of buying and selling, or as a public weigher or user of weights and measures, shall, between the first day of January and the first day of March of each year, have his weights, measures, balances, and scales adjusted and sealed, and it is hereby made the duty of the inspector of weights and measures of the various districts of the state to examine and adjust all measures, balances, and scales used by persons within district engaged in buying, selling, or as public weighers or users of weights and measures.

History: En. Sec. 7, Ch. 34, L. 1911; amd. Sec. 7, Ch. 83, L. 1913; re-en. Sec. 4241, R. C. M. 1921.

4242. Inspection of hay scales and other scales used for public weighing. After the first day of March of each year, the sealer of weights and measures, or his inspectors, or the deputy sealer of weights and measures, shall visit the places of business and enter upon the carts, wagons, or vehicles then in use for the business of all persons engaged in the trade of buying and selling, or selling who have weights, measures, or balances which have not been sealed during the current year, and try, adjust, and seal the same. He shall at least once every six months try, adjust, and seal every hay scale, wagon scale, railroad track scale, or platform scale or balances used in the trade of buying and selling, or selling or for public weighing.

History: En. Sec. 8, Ch. 34, L. 1911; amd. Sec. 8, Ch. 83, L. 1913; re-en. Sec. 4242, R. C. M. 1921.

4243. Authority to inspect measuring devices. The state sealer of weights and measures, the deputy state sealer, or his inspectors of weights and measures, or municipal sealer of weights and measures, shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instruments or mechanical devices for measurement, and the tools, appliances, or accessories connected with any or all of such instruments or measurements, used or employed within the state by a proprietor, agent, lessee, or employee in determining the size, quantity, extent, area, or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by such person or persons for sale, hire, or award. Provided, also, that the state sealer of weights and measures, or his deputy, or his inspectors, or any municipal sealer of weights and measures, shall, at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state, shall be tested as to the correctness of both weight and arithmetical values indicated by them.

History: En. Sec. 9, Ch. 34, L. 1911; amd. Sec. 9, Ch. 83, L. 1913; re-en. Sec. 4243, R. C. M. 1921.

4244. Authority to inspect weight of commodities offered for sale. The sealer of weights and measures, his deputy, or his inspectors, or municipal sealer of weights and measures, may, at irregular intervals, examine all commodities sold and offered for sale and test them for correct weight, measure, or count. He, his deputy, or his inspectors, or municipal sealers may, for the purposes above mentioned, and in the general performance of their official duties, enter or go into or upon, with or without formal warrant, any stand, place, building, or premises, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any dealer whatsoever, for the purpose of making the proper tests; and in the exercise of such duties they shall have full police power to enforce any and all reasonable measures for testing such weights and measures, and also in ascertaining whether false or short weights and measures are being given in any scales or transfer of articles of merchandise taking place within the state. When-

ever the state sealer of weights and measures, or his inspectors or deputies, have reason to believe that any person or persons or corporation is violating the provisions of this act, or any act relating to weights and measures, they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated the provisions of this act, or any act relating to weights and measures, or such evidence may be submitted direct to the attorney general of the state, who shall have authority to prosecute such persons in the proper county.

History: En. Sec. 10, Ch. 34, L. 1911; amd. Sec. 10, Ch. 83, L. 1913; re-en. Sec. 4244, R. C. M. 1921.

4245. Inspection of track scales used by common carriers—penalty for short weights. (a) All track scales used by common carriers for the purpose of weighing freight in carload lots within this state shall be under the control and direction and jurisdiction of the state sealer of weights and measures, and subject to inspection by him, his inspectors, or deputy sealers of weights and measures.

(b) The state sealer of weights and measures, his inspectors, or his deputy sealers of weights and measures, shall have power either on their own motion or on complaint being made, to determine whether any such track scales are defective or inefficient, or whether the time, manner, or method of using same is unreasonable, ineffective, or unjust, and shall have power to condemn any such scale found to be defective or inefficient, and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule, or regulation as may be deemed necessary or advisable.

(c) Any person or persons who shall knowingly and wilfully sell, or direct or permit any person or persons in his or their employ to sell any commodity or article of merchandise, and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or steel-yards for the purpose of weighing live-stock, hay, grain, coal, or other articles, who shall knowingly and wilfully report any false or untrue weight, whereby any other person or persons may be defrauded or injured, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the jail of the county not exceeding thirty days, at the discretion of the court, and also be answerable to the party defrauded or injured in double damages.

History: En. Sec. 11, Ch. 83, L. 1913; re-en. Sec. 4245, R. C. M. 1921.

4246. Weight of commodities offered for sale to be indicated on container—penalty for selling short weight merchandise. From and after January 1, 1914, it shall be unlawful for any person or persons, association, or corporation, to sell or offer for sale in this state any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents; provided, that nothing in this section shall prevent the putting up of commodities or articles of merchandise which have been previously

sold by net weight, measure, or numerical count, into packages or containers for the purpose of delivering or transporting such commodities or articles of merchandise; provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream, offered for sale or sold in packages or containers at a price of ten cents or less per such package.

1. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or for anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid.

2. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance, or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance, or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise, upon which scale or device the graduations or indications are falsely or inaccurately placed either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision.

3. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court having jurisdiction of the offense shall be fined in a sum not to exceed two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, and any weight, measure, balance, or measuring device which shall have been used by him in such violation shall be ordered confiscated and destroyed. He shall also be liable in damages to the party injured by his violation in treble the amount of the property wrongfully taken or not given, and twenty dollars in addition thereto, to be recovered in a court of competent jurisdiction. The selling and delivery of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated weight, measure, or quantity for individual packages not

to exceed three per cent. is permissible; provided, that the variation is as often above as below the weight, measure, or quantity stated.

History: En. Sec. 12, Ch. 83, L. 1913; re-en. Sec. 4246, R. C. M. 1921.

4247. Record of inspection. The state sealer of weights and measures shall keep a complete record of all work done under his direction, and shall make an annual report not later than the first day of January of each year preceding the meeting of the legislative assembly. The inspectors of weights and measures, and all municipal sealers of weights and measures, shall keep a complete record of all work done by them under and by direction of the state sealer of weights and measures, and shall report to the state sealer of weights and measures, not later than the fifth of each month, all work done by them for the preceding month. The state sealer of weights and measures shall provide a system of records, to be kept by all inspectors of weights and measures and municipal sealers of weights and measures, together with blank reports, upon which all reports of said inspectors and sealers of weights and measures are to be made. The form of record provided by the state sealer of weights and measures for all inspectors and municipal sealers of weights and measures shall be the form to be observed and kept by them, and after the said state sealer of weights and measures shall have prescribed the form of said records, said records so kept by any municipal sealer shall be filed in the office of the city clerk of the municipal corporation and become a record of said state.

History: En. Sec. 11, Ch. 34, L. 1911; amd. Sec. 13, Ch. 83, L. 1913; re-en. Sec. 4247, R. C. M. 1921.

4248. Penalty for false certificates by sealers of weights and measures. Any person authorized to seal weights and measures in accordance with this act who shall, without duly verifying the weights and measures of any person by comparison with the standard of weights and measures, stamp a weight or measure, or attach thereto a certificate that said weight or measure has been duly tested, is hereby declared, upon conviction thereof, to be guilty of a misdemeanor, and shall be subject to a penalty of a fine of not less than fifty dollars, nor more than three hundred dollars.

History: En. Sec. 14, Ch. 83, L. 1913; re-en. Sec. 4248, R. C. M. 1921.

4249. Denomination of weights to be marked thereon. Every weight for use in trade, except when the small size of the weight renders it impracticable, shall have the denomination of such weight permanently marked on the top side thereof in legible figures or letters; and every measure of capacity for use in trade shall have the denomination and kind thereof permanently marked on the outside of such measures in legible figures or letters. A weight or measure not in conformity with this section shall not be stamped by the state sealer of weights and measures, or inspector of weights and measures, or deputy sealers of weights and measures.

(a) Apothecaries and all other persons dealing in drugs, medicine, and merchandise, commonly sold by apothecaries' weight or by apothecaries' liquid measure, shall at least once in two years cause such weights and measures so used to be tested and sealed by officers authorized under this act to inspect weights and measures.

History: En. Secs. 13 and 14, Ch. 34, L. 1911; amd. Sec. 15, Ch. 83, L. 1913; re-en. Sec. 4249, R. C. M. 1921.

4250. Prohibition against using weights pending adjustment. If any weights, measures, or balances can be readily adjusted by such means as the inspector or sealer of weights and measures may have at hand, he may adjust and seal them, but if they cannot be readily adjusted he shall affix to such weights, measures, or balances a notice forbidding their use until he is satisfied they have been so adjusted as to conform with the standard. Any person or persons who remove said notice, without the consent of the officer affixing the same, shall upon conviction be fined in a sum not to exceed fifty dollars.

History: En. Sec. 15, Ch. 34, L. 1911; amd. Sec. 16, Ch. 83, L. 1913; re-en. Sec. 4250, R. C. M. 1921.

4251. Condemnation of weights not standard. All weights, measures, and balances, which cannot be made to conform to the standard weights and measures as herein provided, shall have stamped "condemned" or "C.D." by the sealer of weights and measures.

History: En. Sec. 16, Ch. 34, L. 1911; amd. Sec. 17, Ch. 83, L. 1913; re-en. Sec. 4251, R. C. M. 1921.

4252. Weights may be seized as evidence without a warrant. The state sealer of weights and measures, or inspector of weights and measures, or deputy sealer of weights and measures, may seize, without a warrant, such weights, measures, or balance as may be necessary to be used as evidence in case of violation of any act relative to the sealing of weights and measures. They shall be returned to the owners or forfeited as the court may direct.

History: En. Sec. 18, Ch. 83, L. 1913; re-en. Sec. 4252, R. C. M. 1921.

4253. Scales of itinerant peddlers to be adjusted before use—penalty for violation. All itinerant peddlers and hawkers, using scales, balances, weights, or measures, shall take the same to the office of the state sealer of weights and measures, or inspector of weights and measures or deputy sealer of weights and measures, before any use is made thereof, and have the same sealed and adjusted annually; and any such person failing to comply with the provisions of this section shall be fined not less than five dollars nor more than one hundred dollars for each offense, and every day such person shall use such scales, balances, weights, or measures, without having the same adjusted and sealed as hereinbefore provided for, shall constitute a separate and distinct offense. Any itinerant peddler or hawker found using any false scale shall be subject to a fine of not less than ten dollars, nor more than fifty dollars for each offense.

History: En. Sec. 18, Ch. 34, L. 1911; amd. Sec. 19, Ch. 83, L. 1913; re-en. Sec. 4253, R. C. M. 1921.

4254. Regulation of containers of milk—penalty for violation. All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles, which shall prior to being used in such scale, be sealed by the sealer of weights and measures of the town where the person so using the same shall usually reside in this state, or of the town where such milk shall be sold

for use; and every person selling any of the same contrary to this section, or delivering any of the same sold contrary hereto, shall be fined for the first offense not less than fifty dollars and not exceeding one hundred dollars, and for the subsequent offense not less than one hundred dollars or imprisonment not to exceed ninety days, or both such fine and imprisonment. Any purchaser of milk, cream, or skimmed milk, having reason to believe that any measure, can, jar, bottle, or other vessel or receptacle, in which milk, cream, or skimmed milk is sold and delivered to him, is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased, may apply to the sealer of weights and measures, which sealer shall test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity, according to such certificate, shall be less than the amount purchased, such purchaser may make complaint and deliver such certificate to any officer authorized to make complaint for the violation of this act.

History: En. Sec. 19, Ch. 34, L. 1911; amd. Sec. 20, Ch. 83, L. 1913; re-en. Sec. 4254, R. C. M. 1921.

4255. Contents of milk bottles to be indicated thereon—penalty for violation. No person or corporation shall, after the passage of this act, sell or offer for sale within the state of Montana, any milk or cream in bottles or in glass jars, unless each of said bottles or glass jars in which said milk or cream is sold or offered for sale shall have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, the capacity thereof, and the state sealer of weights and measures or inspectôr of weights and measures, or deputy sealer of weights and measures, shall have the right, at any time, to examine any bottle or glass jar in which milk or cream is sold or offered for sale in the state of Montana, or which is used by any person or corporation for the purpose of containing milk or cream to be sold or offered for sale, in order to ascertain whether such bottle or jar is of a capacity not less than that which it purports to be; and if any such bottle or jar is of less capacity than that which it purports to be, or if any such bottle or jar shall not have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, its capacity as aforesaid, the person or corporation selling or offering for sale milk or cream in any such bottle or jar, or having in his possession any such bottle or jar, to be used or which has been used for the purpose of containing milk or cream to be sold or offered for sale in said state of Montana shall, upon conviction, be fined not less than five dollars nor more than one hundred dollars for each offense; and each and every bottle or glass jar found in the possession of any person or corporation used or to be used, or which has been used by such person or corporation for the purpose of containing milk or cream to be sold or offered for sale in the state of Montana, which shall be found to be of a less capacity than that blown into the same, or otherwise so indelibly and permanently indicated thereon, or which shall not have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner the capacity as aforesaid, shall constitute a separate and distinct offense on

the part of such person or corporation, and upon conviction such person or corporation shall be fined in a sum not less than ten dollars nor more than three hundred dollars.

History: En. Sec. 20, Ch. 34, L. 1911; amd. Sec. 21, Ch. 83, L. 1913; re-en. Sec. 4255, R. C. M. 1921.

4256. Penalty for using false weights. A person who uses, or has in his possession for use in trade, any weight, measure, scale, balance, steel-yard, or weighing machine, which is false or incorrect, shall be fined not more than one hundred dollars, or in case of a second offense, not more than two hundred dollars, and any contract for gain, deal, or dealing made by the same shall be void, and the weight, scale, measure, balance, or steel-yard shall be liable to be forfeited.

History: En. Sec. 21, Ch. 34, L. 1911; re-en. Sec. 22, Ch. 83, L. 1913; re-en. Sec. 4256, R. C. M. 1921.

4257. Weights stamped by state sealer to be legal weights. A weight or measure duly stamped by the state sealer of weights and measures, or inspector of weights and measures, or deputy sealer of weights and measures, or by the national bureau of standards, shall be a legal weight or measure throughout the state, unless found to be false or incorrect, and shall not be liable to be re-sealed because used in any other place than that in which it was originally stamped.

History: En. Sec. 22, Ch. 34, L. 1911; re-en. Sec. 23, Ch. 83, L. 1913; re-en. Sec. 4257, R. C. M. 1921.

4258. Penalty for selling less quantity than represented. Whoever sells or offers for sale a less quantity than represented, or sells in a manner contrary to law, shall be guilty of fraud, and shall be fined not more than one hundred dollars, or, in case of a second offense, not more than two hundred dollars.

History: En. Sec. 23, Ch. 34, L. 1911; re-en. Sec. 24, Ch. 83, L. 1913; re-en. Sec. 4258, R. C. M. 1921.

4259. State sealer to establish legal tolerances. The state sealer of weights and measures shall, after consultation with, and with the advice of the national bureau of standards, establish tolerances for use in the state of Montana, and said tolerances shall be the legal tolerances in the state of Montana.

History: En. Sec. 24, Ch. 34, L. 1911; re-en. Sec. 25, Ch. 83, L. 1913; re-en. Sec. 4259, R. C. M. 1921.

4260. Penalty for refusing to permit examination by state sealer or deputies. A person who neglects or refuses to produce for the state sealer of weights and measures, or inspectors of weights and measures, or deputy sealer of weights and measures, all weights, measures, or balances in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law, or violates any of the provisions of this act, shall be fined not more than one hundred dollars, and in case of a second offense not more than two hundred dollars.

History: En. Sec. 25, Ch. 34, L. 1911; re-en. Sec. 26, Ch. 83, L. 1913; re-en. Sec. 4260, R. C. M. 1921.

4261. State sealer authorized to promulgate rules. The state sealer of weights and measures is hereby authorized to make and promulgate such rules and regulations for the government, guidance, and direction of inspectors of weights and measures, and deputy city sealers of weights and measures, in conformity with this act, as may be necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations, when promulgated by the state sealer of weights and measures, with the approval of the governor of the state of Montana indorsed thereon, shall have the same force and effect as if provided for in this act. Such rules and regulations shall be published at least once in a newspaper of general circulation in each county and city of the state of Montana.

History: En. Sec. 28, Ch. 34, L. 1911; re-en. Sec. 27, Ch. 83, L. 1913; re-en. Sec. 4261, R. C. M. 1921.

4262. Penalty for violation of act. Any person or persons violating any of the provisions of this act where no other penalty is provided shall, upon conviction thereof, be fined in a sum not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty nor more than ninety days.

History: En. Sec. 29, Ch. 34, L. 1911; re-en. Sec. 28, Ch. 83, L. 1913; re-en. Sec. 4262, R. C. M. 1921.

4263. Sealers ex-officio deputy sheriffs—powers. The state sealer of weights and measures, inspectors of weights and measures, or sealer of weights and measures of the various cities, towns, and counties throughout the state, shall be, by virtue of their respective offices, deputy sheriffs, and as such shall have power to arrest and detain any person violating the provisions of this act, without warrant.

History: En. Sec. 30, Ch. 34, L. 1911; re-en. Sec. 29, Ch. 83, L. 1913; re-en. Sec. 4263, R. C. M. 1921.

4264. Disposition of fines. All fines collected for violation of the provisions of this act shall be paid to the state treasurer for support and maintenance of the department of weights and measures. All justices of the peace and clerks of district courts who may collect any fine imposed for the violation of the provisions of this act must, not later than the fifth day of each month, transmit to the state sealer of weights and measures all moneys so collected, and the state sealer of weights and measures shall pay the same quarterly to the state treasurer, taking his receipt therefor.

History: En. Sec. 31, Ch. 34, L. 1911; re-en. Sec. 30, Ch. 83, L. 1913; re-en. Sec. 4264, R. C. M. 1921.

4265. Repealed—Chapter 138, laws of 1931.

CHAPTER 331

REGULATION OF SALE OF APPLES

- Section 4265.1. Grades of apples.
4265.2. Marking of apple containers.
4265.3. Designation of grade of bulk apples.
4265.4. Standard size of apple box.
4265.5. Short boxes to be marked.
4265.6. Penalty for violation of act.

4265.1. Grades of apples. The standard grades of apples for the state of Montana shall be: "Extra Fancy or First Grade," "Fancy or Second Grade," "C," "Combination Grades," and "XFFC."

(a) "Extra Fancy or First Grade," shall consist of apples of one variety which are mature, hand picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russeting, drought spot, hail marks, visible water-core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade.

(b) "Fancy or Second Grade" shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from visible water-core, broken skin, and from damage caused by bruises, limb-rub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury.

(c) "C" grade shall consist of apples which are mature, free from infection, soft bruises and broken skin and must have ten per centum (10%) of color requirements characteristic of the variety, provided that this grade may include healed over worm stings and scab spots not to exceed one-quarter ($\frac{1}{4}$) inch in the aggregate. The word "Choice" must not be used in connection with this grade.

(d) Cull apples shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of extra fancy or first grade, fancy or second grade, or of "C" grade and shall be marked in block letters not less than one inch in height on both ends of box "Culls."

(e) "Combination Grades." When "Extra Fancy or First Grade" and "Fancy or Second Grade" apples are packed together the boxes must be marked "Combination Extra Fancy or First Grade, and Fancy or Second Grade." When "Fancy or Second Grade" and "C" grades are packed together the boxes must be marked "Combination Fancy or Second Grade and C." Combination grades must contain at least twenty-five per centum (25%) of apples which belong to the higher grade in the combination.

(f) "XFFC" grade shall consist of "Extra Fancy or First Grade," "Fancy or Second Grade" and "C" grade apples packed in combination. Boxes so marked must contain at least fifteen per centum (15%) of apples of "Extra Fancy or First Grade" and not more than fifty per centum (50%) of "C" grade. No apples failing to meet the requirements of "C" grade shall be permitted in this grade.

(g) No apples smaller than two and one-fourth ($2\frac{1}{4}$) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "Small" in block letters not less than one inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(h) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed.

History: En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935.

4265.2. Marking of apple containers. Any box, barrel, crate or carton used in packing apples for sale shall be marked or branded in plain legible letters on one (1) end with:

- a. The name of grower, or person, or firm responsible for pack, and the locality where grown or packed.
- b. With the name of the variety.
- c. With the grade contained therein, which must comply with the provisions of this act.
- d. With the approximate number of apples contained therein, or with the net weight of contents.

History: En. Sec. 2, Ch. 138, L. 1931.

4265.3. Designation of grade of bulk apples. Apples shipped or sold in bulk shall have two cards at least ten by twelve inches (10" x 12") in size attached to the doors of the car, or on each side of truck in which they are moved, such cards to designate the grade of the apples contained therein as specified in section 4265.1, in plain legible printed letters at least two inches in height.

History: En. Sec. 3, Ch. 138, L. 1931; amd. Sec. 2, Ch. 39, L. 1935.

4265.4. Standard size of apple box. There is hereby created and established a standard size for apple boxes for the state of Montana. The standard size of an apple box shall be of the following dimensions, when measured without distention of its parts: Depth of end, ten and one-half inches (10½"); width of end, eleven and one-half inches (11½"); length of box, eighteen inches (18") inside measurements; and representing as nearly as possible two thousand one hundred and seventy-three and one-half cubic inches (2,173½").

History: En. Sec. 4, Ch. 138, L. 1931.

4265.5. Short boxes to be marked. Any box in which apples shall be packed and offered for sale that contains less than the required number of cubical inches, as prescribed in the preceding section, shall be plainly marked on one (1) side and one (1) end with the words "Short Box," or with the words or figures showing the practical relation which the actual capacity of the box bears to the capacity required by the preceding section. The marking required by this paragraph shall be in black letters of not less than one-half (½) inch in size.

History: En. Sec. 5, Ch. 138, L. 1931.

4265.6. Penalty for violation of act. No person, firm, company or corporation shall sell or offer for sale or shipment within or without the state of Montana, apples branded or packed in containers in violation of the provisions of this act. Any person, firm, company or corporation who shall knowingly sell or offer for sale or shipment within or without the state of Montana, apples in violation of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

History: En. Sec. 6, Ch. 138, L. 1931; amd. Sec. 3, Ch. 39, L. 1935.

4266-4272. Repealed—Chapter 138, laws of 1931.

CHAPTER 332

STANDARD WEIGHT OF BREAD

Section 4273. Weight requirements for sale of bread.

4274. Definitions—conditions under which bread may be sold.

4275. Return or repurchase of bread prohibited.

4276. Penalty for violation of law.

4273. Weight requirements for sale of bread. From and after the passage of this act it shall be unlawful for any person or persons, association, co-partnership, or corporation to manufacture for retail or wholesale trade, or to sell bread, unless the same shall be of the following weights, which shall be net weights eight hours after baking: One pound, one and one-half pounds, two pounds, three pounds, four pounds, five pounds, six pounds, or other multiple pound weights; variation at the rate of one ounce per pound over and one ounce per pound under the above specified units weights are to be permitted in individual loaves, but the average weight of not less than twenty-five loaves of any one unit of any one kind shall be not less than the weight prescribed for such unit, and if twin or multiple loaves are wrapped at the place where baked or sold to the consumer wrapped and undivided, the loaf must conform to the above weight requirements, and if the twin or multiple loaf is unwrapped or divided before being sold to the consumer, each unit of the loaf must conform to the above weight requirements; provided, that this act shall not apply to persons, firms, or corporations who do not hold themselves out to the public, and engaging in a general and established business of manufacturing or selling bread and bread products.

History: En. Sec. 1, Ch. 155, L. 1919; re-en. Sec. 4273, R. C. M. 1921.

4274. Definitions—conditions under which bread may be sold. In construing provisions of the preceding section the following definitions shall be had: A twin or multiple loaf is one that is made of two or more portions of dough baked in one pan; single units weighing less than one pound must not be baked; a manufacturer or seller of loaves of the weights prescribed may cut and sell a portion of a loaf to a consumer; bread may be sold at any time after baking, and it shall not be required that bread shall remain unwrapped for any specified length of time after baking.

History: En. Sec. 2, Ch. 155, L. 1919; re-en. Sec. 4274, R. C. M. 1921.

4275. Return or repurchase of bread prohibited. It shall be unlawful for any person or persons, association, co-partnership, or corporation engaged in the manufacture for sale, or the sale of bread, to directly or indirectly accept return of bread theretofore sold, nor repurchase the same, nor allow credit to any one for the same; nor shall any bread previously sold be exchanged for other bread.

History: En. Sec. 3, Ch. 155, L. 1919; re-en. Sec. 4275, R. C. M. 1921.

4276. Penalty for violation of law. Any such manufacturer or seller violating any of the provisions herein contained shall be liable to a fine of not less than ten dollars nor more than one hundred dollars for each and every offense, and each separate sale or violation of any of the provisions of this act shall constitute a separate offense.

History: En. Sec. 4, Ch. 155, L. 1919; re-en. Sec. 4276, R. C. M. 1921.

CHAPTER 333

TIME

- Section 4277. Time, how computed.
 4278. Leap-year.
 4279. The year and its parts.
 4280. The week.
 4281. The day.
 4282. "Day-time" and "night-time" defined.

4277. Time, how computed. Time is computed according to the Gregorian or new style; and the first of January in every year passed since seventeen hundred and fifty-two, or to come, must be reckoned as the first day of the year.

History: En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907; re-en. Sec. 4277, R. C. M. 1921. Cal. Pol. C. Sec. 3255.

4278. Leap-year. Except the year nineteen hundred, every fourth year, which, by usage in this state, is considered a leap-year, is a leap-year consisting of three hundred and sixty-six days.

History: En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907; re-en. Sec. 4278, R. C. M. 1921. Cal. Pol. C. Sec. 3256.

4279. The year and its parts. The term "year" means a period of three hundred and sixty-five days; a half-year, one hundred and eighty-two days; a quarter of a year, ninety-one days; and the added day of a leap-year, and the day immediately preceding, if they occur in any such period, must be reckoned together as one day.

History: En. Sec. 3142, Pol. C. 1895; re-en. Sec. 2029, Rev. C. 1907; re-en. Sec. 4279, R. C. M. 1921. Cal. Pol. C. Sec. 3257.

References

Cited or applied as section 2029, revised codes, in *Kelly v. Independent Publishing Co.*, 45 M 127, 133, 122 P 735.

4280. The week. A week consists of seven consecutive days.

History: En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907; re-en. Sec. 4280, R. C. M. 1921. Cal. Pol. C. Sec. 3258.

References

Cited or applied as section 2030, revised codes, in *Smith v. Collis*, 42 M 350, 359, 112 P 1070; *State ex rel. Stevens v. McLeish*, 59 M 527, 531, 198 P 357; *Garry v. Martin*, 70 M 587, 592, 227 P 573.

4281. The day. A day is the period of time between any midnight and the midnight following.

History: En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; re-en. Sec. 4281, R. C. M. 1921. Cal. Pol. C. Sec. 3259.

References

State ex rel. *St. George v. Justice Court*, 80 M 53, 60, 257 P 1034; State ex rel. *Bevan v. Mountjoy*, 82 M 594, 601, 268 P 558.

4282. "Day-time" and "night-time" defined. "Day-time" is the period of time between "sunrise" and "sunset," and "night-time" is the period of time between "sunset" and "sunrise."

History: En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907; re-en. Sec. 4282, R. C. M. 1921. Cal. Pol. C. Sec. 3260.

CHAPTER 334

MONEY

- Section 4283. Money of account.
 4284. Limitation of preceding section.
 4285. Amount, how stated in judgments, etc.

4283. Money of account. The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907; re-en. Sec. 4283, R. C. M. 1921. Cal. Pol. C. Sec. 3272.

4284. Limitation on preceding section. The provisions of the preceding section do not vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument, expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907; re-en. Sec. 4284, R. C. M. 1921. Cal. Pol. C. Sec. 3273.

4285. Amount, how stated in judgments, etc. In judgments and executions the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. 4285, R. C. M. 1921. Cal. Pol. C. Sec. 3274.

CHAPTER 335

TRADE-MARKS

- Section 4286. Trade-mark defined.
 4287. Use of trade-mark—how secured.
 4288. Record of trade-marks or names—fee.
 4289. Who are owners of trade-marks—how transferred.
 4290. Penalties.
 4291. Marks and devices may be filed.
 4292. Penalties.

4286. Trade-mark defined. The phrase "trade-mark," as used in this chapter, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description, or the designation or name for any mill, hotel, factory, or other business.

History: En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907; re-en. Sec. 4286, R. C. M. 1921. Cal. Pol. C. Sec. 3196.

References

Cited or applied as section 2036, revised codes, in *Esselstyn v. Holmes*, 42 M 507, 514, 114 P 118.

4287. Use of trade-mark—how secured. Any person may record any trade-mark or name by filing with the secretary of state his claim to the same, and a copy or description of such trade-mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he, or the firm or corporation of which he is a member, is the exclusive owner, or agent of the owner, of such trade-mark or name.

History: En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907; re-en. Sec. 4287, R. C. M. 1921. Cal. Pol. C. Sec. 3197.

4288. Record of trade marks or names—fee. The secretary of state must keep for public examination, a record of all trade marks or names

filed in his office, with the date when filed and the name of the claimant, and must not record any two (2) like trade marks or names; provided, however, that in the event that an affidavit, attested by two (2) witnesses, is filed in the office of the secretary of state to the effect that any trade marks or name recorded therein in the name of any person or persons, corporation or association has not been used by such person or persons, corporation or association, their successors or assigns, for a period of five (5) years immediately preceding the filing of said affidavit, then and in that event the secretary of state is authorized, empowered and directed to record said trade mark or name in the name of the person making application therefor in said affidavit, or in the name of the person or persons, corporation or association for whose benefit said application and affidavit are made, but without prejudice to any person claiming to be injured thereby to contest the same in any court of competent jurisdiction, within a period of six (6) months thereafter. He must, at the time of filing and recording a trade mark or name, collect from the claimant a fee of three dollars (\$3.00).

History: En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rev. C. 1907; re-en. Sec. 4288, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1931. Cal. Pol. C. Sec. 3198.

4289. Who are owners of trade-marks—how transferred. Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, any use of trade-marks or names in violation of this chapter.

History: En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907; re-en. Sec. 4289, R. C. M. 1921. Cal. Pol. C. Sec. 3199.

4290. Penalties. The penalty for forging, counterfeiting, or unlawful using of trade-marks is provided in section 11199 of the penal code.

History: En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R. C. M. 1921.

References

Cited or applied as section 2040, revised codes, in *Esselstyn v. Holmes*, 42 M 507, 515, 114 P 118.

4291. Marks and devices may be filed. Any person engaged in manufacturing, bottling, or selling soda, mineral, or aerated waters, cider, ginger ale, or other aerated, non-intoxicating beverages in bottles or siphons with his name or other marks or devices branded, stamped, engraved, etched, blown, impressed, or otherwise produced upon such bottles or siphons, or the boxes used by him, may have a trade-mark for the same as provided in this chapter.

History: En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907; re-en. Sec. 4291, R. C. M. 1921.

4292. Penalties. Every person who violates the provisions of the preceding section is punishable as provided in sections 11199 and 11203 of the penal code.

History: En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R. C. M. 1921.

CHAPTER 336

DEFINITIONS, COURSES, AND SURVEYS

- Section 4293. County defined.
 4294. Courses deemed true.
 4295. Directions deemed due.
 4296. Meaning of terms.
 4297. Same.
 4298. Surveys to definitely establish unsettled boundaries.
 4299. Reports to governor on disagreement of commissioners.
 4300. Governor to determine boundary thereupon or to order new surveys.
 4301. Approved surveys to be conclusive.
 4302. Previous surveys validated—their force as evidence.
 4303. Apportionment of cost of survey—provision for payment thereof.
 4304. Collection of old taxes when county is divided or boundary altered.

4293. County defined. A county is the largest political division of the state having corporate power.

History: En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R. C. M. 1921. Cal. Pol. C. Sec. 3901.

Limit of Powers

Prerogative or its synonym sovereignty means the inherent power of the people; it must involve the general interest of the state at large, and though the prerogative of the state may be invoked for the protection of the rights of a county, its agent or creature, the county, in the absence of express authority granting it, does not itself possess the power of the sovereign. *Bignell et al. v. Cummins*, 69 M 294, 298, 222 P 797.

Counties and school districts are subdivisions of the state government with fixed

powers and duties, and any act taken by the commissioners of the former or the trustees of the latter must be justified by the provisions of the statutes defining and limiting their powers. *State v. McGraw*, 74 M 152, 155, 240 P 812.

Counties are subdivisions of the state of purely statutory creation and when they assume to exercise a power, authority therefor must be found in the statute conferring it upon them or necessarily implied from the power expressly conferred; and wherever a power is conferred upon the board of county commissioners, but the mode in which the authority is to be exercised is not indicated, it may in its discretion select any appropriate mode or course of procedure. *State ex rel. Blair v. Kuhr*, 86 M 377, 283 P 758.

4294. Courses deemed true. In describing courses the words “north,” “south,” “east,” and “west” mean true courses, and refer to the true meridian unless otherwise declared.

History: En. Sec. 4103, Pol. C. 1895; re-en. Sec. 2784, Rev. C. 1907; re-en. Sec. 4294, R. C. M. 1921. Cal. Pol. C. Sec. 3903.

4295. Directions deemed due. The words “northerly,” “southerly,” “easterly” and “westerly” mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects.

History: En. Sec. 4104, Pol. C. 1895; re-en. Sec. 2785, Rev. C. 1907; re-en. Sec. 4295, R. C. M. 1921. Cal. Pol. C. Sec. 3904.

4296. Meaning of terms. The words “to,” “on,” “along,” “with,” or “by” a mountain or ridge, mean summit-point, or summit-line, unless otherwise expressed.

History: En. Sec. 4105, Pol. C. 1895; re-en. Sec. 2786, Rev. C. 1907; re-en. Sec. 4296, R. C. M. 1921. Cal. Pol. C. Sec. 3905.

4297. Same. The words “to,” “by,” “along,” “with,” “in,” “up,” or “down” a creek, river, slough, strait, or bay mean the middle of the main channel thereof, unless otherwise expressed.

History: En. Sec. 4106, Pol. C. 1895; re-en. Sec. 2787, Rev. C. 1907; re-en. Sec. 4297, R. C. M. 1921. Cal. Pol. C. Sec. 3906.

4298. Surveys to definitely establish unsettled boundaries. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the county surveyors of all the counties affected thereby, and approved by the boards of county commissioners of such counties.

History: En. Sec. 4150, Pol. C. 1895; re-en. Sec. 2844, Rev. C. 1907; re-en. Sec. 4298, R. C. M. 1921. Cal. Pol. C. Sec. 3969.

4299. Reports to governor on disagreement of commissioners. If the boards of county commissioners do not agree upon and finally approve the survey, each county surveyor must make a report to the governor, with surveys, maps, notes, and explanations touching disputed points.

History: En. Sec. 4151, Pol. C. 1895; re-en. Sec. 2845, Rev. C. 1907; re-en. Sec. 4299, R. C. M. 1921. Cal. Pol. C. Sec. 3970.

4300. Governor to determine boundary thereupon or to order new surveys. Upon such reports the governor must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys so made establish such common boundaries and corners.

History: En. Sec. 4152, Pol. C. 1895; re-en. Sec. 2846, Rev. C. 1907; re-en. Sec. 4300, R. C. M. 1921. Cal. Pol. C. Sec. 3971.

4301. Approved surveys to be conclusive. All surveys finally approved under the provisions of this chapter are conclusive ascertainment of lines and corners included therein.

History: En. Sec. 4153, Pol. C. 1895; re-en. Sec. 2847, Rev. C. 1907; re-en. Sec. 4301, R. C. M. 1921. Cal. Pol. C. Sec. 3972.

4302. Previous surveys validated—their force as evidence. All surveys and maps of boundary lines heretofore legally made and approved are declared valid and are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this code.

History: En. Sec. 4154, Pol. C. 1895; re-en. Sec. 2848, Rev. C. 1907; re-en. Sec. 4302, R. C. M. 1921. Cal. Pol. C. Sec. 3973.

4303. Apportionment of cost of survey—provision for payment thereof. The cost of making such surveys must be apportioned equally among the counties interested, and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund.

History: En. Sec. 4155, Pol. C. 1895; re-en. Sec. 2849, Rev. C. 1907; re-en. Sec. 4303, R. C. M. 1921. Cal. Pol. C. Sec. 3975.

4304. Collection of old taxes when county is divided or boundary altered. When a county is divided or a boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.

History: En. Sec. 4156, Pol. C. 1895; re-en. Sec. 2850, Rev. C. 1907; re-en. Sec. 4304, R. C. M. 1921. Cal. Pol. C. Sec. 3976.

Operation and Effect

Delinquent taxes paid on property incorporated in a new county, in the interim between the passing of the resolution by

the board of commissioners of the parent county and the expiration of the ninety-day period after its filing with the secretary of state, belong to the parent and not to the new county. County of Hill v. County of Liberty, 62 M 15, 20, 203 P 500.

Id. Under section 4398, providing for the apportionment of property and debts between a new and the old county or

counties out of which it is created, taxes upon property situated in that portion of the parent county or counties incorporated in the new county which are delinquent upon creation of the new one or were delinquent and remain unpaid for previous years, are collectible by and belong to the new county. (See Opinion on Motion for Rehearing.)

CHAPTER 337

COUNTY BCUNDARIES

Section	4305.	County boundaries.
	4306.	Big Horn county.
	4307.	Blaine county.
	4308.	Broadwater county.
	4309.	Carbon county.
	4310.	Carter county.
	4311.	Cascade county.
	4312.	Chouteau county.
	4313.	Custer county.
	4314.	Daniels county.
	4315.	Dawson county.
	4316.	Deer Lodge county.
	4317.	Fallon county.
	4318.	Fergus county.
	4319.	Flathead county.
	4320.	Gallatin county.
	4321.	Garfield county.
	4322.	Glacier county.
	4323.	Golden Valley county.
	4324.	Granite county.
	4325.	Hill county.
	4326.	Jefferson county.
	4327.	Judith Basin county.
	4327.1.	Lake county.
	4328.	Lewis and Clark county.
	4329.	Liberty county.
	4330.	Lincoln county.
	4331.	Madison county.
	4332.	McCone county.
	4333.	Meagher county.
	4334.	Mineral county.
	4335.	Missoula county.
	4336.	Musselshell county.
	4337.	Park county.
	4337.1.	Petroleum county.
	4338.	Phillips county.
	4339.	Pondera county.
	4340.	Powder River county.
	4340.1.	Boundary line between Carter and Powder River counties established.
	4340.2.	Alteration of boundaries of Carter and Powder River counties.
	4341.	Powell county.
	4342.	Prairie county.
	4343.	Ravalli county.
	4344.	Richland county.
	4345.	Roosevelt county.
	4346.	Rosebud county.
	4347.	Sanders county.
	4348.	Sheridan county.
	4349.	Silver Bow county.
	4350.	Stillwater county.
	4351.	Sweet Grass county.
	4352.	Teton county.
	4353.	Toole county.
	4354.	Treasure county.

- 4355. Valley county.
- 4356. Wheatland county.
- 4357. Wibaux county.
- 4358. Yellowstone county.
- 4358.1. Boundary line between Yellowstone and Carbon counties established.
- 4358.2. Alteration of boundaries of Yellowstone and Carbon counties.
- 4359. Effect of act.
- 4360. Township and range designations.
- 4362. Change in boundary of Teton and Chouteau.

4305. County boundaries. The boundaries of the several counties of the state of Montana are hereby fixed and defined, as follows:

BEAVERHEAD COUNTY. Beginning at a point on the first standard parallel south at the northwest corner of section three (3), township six (6) south, range seven (7) west; thence south eighteen (18) miles to the northwest corner of section three (3), township nine (9) south, range seven (7) west; thence east six (6) miles, more or less, to the northeast corner of section four (4), township nine (9) south, range six (6) west; thence south six (6) miles, more or less, to the northeast corner of section four (4), township ten (10) south, range six (6) west; thence east seven (7) miles, more or less, to the northeast corner of section three (3), township ten (10) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-four (34), township ten (10) south, range five (5) west; thence east to the northwest corner of section one (1), township eleven (11) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-five (35), township eleven (11) south, range five (5) west; thence east five (5) miles to the northeast corner of section three (3), township twelve (12) south, range four (4) west; thence south three (3) miles to the northeast corner of section twenty-two (22), township twelve (12) south, range four (4) west; thence east fourteen (14) miles, more or less, to the northeast corner of section twenty-four (24), township twelve (12) south, range two (2) west; thence south five (5) miles, more or less, to the northeast corner of section thirteen (13), township thirteen (13) south, range two (2) west; thence east sixteen (16) miles, more or less, following section lines to the point of intersection with the boundary lines between Montana and Idaho at the top of the divide of the main range of the Rocky mountains; thence in a general westerly and north-westerly direction along the top of said divide following the boundary line between the state of Montana and the state of Idaho, where the summit of the main range of the Bitter Root mountains joins said Continental divide; thence following in a general northeasterly direction along the top of said Continental divide to a point on said Continental divide nearest the head of the main drain of Pintler creek; thence along the middle of the channel of said Pintler creek in a southerly direction to a point in the center of the main channel of the Big Hole river directly opposite to the center of the outlet of said Pintler creek; thence following the center of the main channel of the Big Hole river in an easterly and southerly direction to the point where said middle channel of said Big Hole river intersects the west boundary of section thirty-two (32), township four (4) south, range seven (7) west; thence in a general southeasterly direction in a straight line to the southeast corner of section sixteen (16), town-

ship five (5) south, range seven (7) west; thence south to the southeast corner of section thirty-three (33), township five (5) south, range seven (7) west; said corner being a monument on the first standard parallel south; thence east along said standard parallel to the northeast corner of section four (4), township six (6) south, range seven (7) west; being the place of beginning. The county seat is Dillon, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529; boundaries established Dec. 10, 1867, L. 1867, p. 102; Sec. 3, Cod. Stat. 1871; territory added Feb. 7, 1874, L. 1874, p. 68; Sec. 325, 5th Div. Rev. Stat. 1879; Sec. 732, 5th Div. Comp.

Stat. 1887; Sec. 4109, Pol. C. 1895; Sec. 2791, Rev. C. 1907; boundaries changed and part of Madison county added by Ch. 73, L. 1911; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4305, R. C. M. 1921.

4306. BIG HORN COUNTY. Beginning at a point where the township line between townships three (3) and four (4) north, range thirty-four (34) east, intersects the mid-channel of Big Horn river; thence west along said township line to the northwest corner of section six (6), township three (3) north, range thirty-three (33) east; thence south to the southwest corner of section nineteen (19), township three (3) north, range thirty-three (33) east; thence west to the northwest corner of section thirty (30), township three (3) north, range thirty-two (32) east; thence south to the northwest corner of section six (6), township two (2) north, range thirty-two (32) east; thence west to the northwest corner of section two (2), township two (2) north, range thirty-one (31) east; thence south to the northwest corner of section fourteen (14), township two (2) north, range thirty-one (31) east; thence west to the northwest corner of section sixteen (16), township two (2) north, range thirty-one (31) east; thence south to the northwest corner of section twenty-eight (28), township two (2) north, range thirty-one (31) east; thence west to the northwest corner of section thirty (30), township two (2) north, range thirty (30) east; thence south to the southwest corner of section thirty-one (31), township one (1) north, range thirty (30) east; thence west to the northwest corner of section six (6), township one (1) south, range thirty (30) east; thence south to the northwest corner section six (6), township four (4) south, range thirty (30) east; thence west to the northwest corner of section six (6), township four (4) south, range twenty-nine (29) east; thence south to the southwest corner of section seven (7), township four (4) south, range twenty-nine (29) east; thence west to the northeast corner of section thirteen (13), township four (4) south, range twenty-seven (27) east; thence south to the southeast corner of section twenty-four (24), township four (4) south, range twenty-seven (27) east; thence west to the southwest corner of section nineteen (19), township four (4) south, range twenty-seven (27) east; thence north to the northeast corner of section twenty-five (25); township four (4) south, range twenty-six (26) east; thence west along section lines to an intersection with the west boundary line of the Crow Indian reservation, in township four (4) south, range twenty-five (25) east; thence in a southwesterly direction along the boundary line of said Crow Indian reservation to the southwest corner of said reservation, in township seven (7) south, range twenty-five (25) east; thence east along the boundary line of the Crow Indian reservation to an intersection with the center of the channel of

Big Horn river; thence southwesterly along the center of the channel of said Big Horn river to its intersection with the north boundary line of the state of Wyoming; thence east along the north boundary line of the state of Wyoming to an intersection with the line between ranges forty-four (44), and forty-five (45) east; thence north along the line between ranges forty-four (44), and forty-five (45), east, to the northeast corner of township eight (8) south, range forty-four (44) east; thence west along the south boundary line of township seven (7) south, ranges forty-four (44), forty-three (43), forty-two (42), and forty-one (41) east, to the northwest corner of township seven and one-half (7½) south, range forty-one (41) east; thence north to the northeast corner of township six (6) south, range forty (40) east; thence east to the southwest corner of township five (5) south, range forty-one (41) east; thence north to the northern line of the Northern Cheyenne Indian reservation, where the same intersects the east line of township two (2) south, range forty (40) east; thence west following the northern boundary line of the Northern Cheyenne Indian reservation to an intersection with the east line produced of section four (4), township two (2) south, range thirty-nine (39) east; thence north to the northeast corner of section four (4), township one (1) south, range thirty-nine (39) east; thence east to the southeast corner of section thirty-three (33), township one (1) north, range thirty-nine (39) east; thence north to the northeast corner of section twenty-one (21), township one (1) north, range thirty-nine (39) east; thence west to the northwest corner of section nineteen (19), township one (1) north, range thirty-nine (39) east; thence north to the northeast corner of section one (1), township one (1) north, range thirty-eight (38) east; thence west to the northwest corner of section six (6), township one (1) north, range thirty-eight (38) east; thence north to the northeast corner of section twenty-four (24), township two (2) north, range thirty-seven (37) east; thence west to the northwest corner of section nineteen (19), township two (2) north, range thirty-seven (37) east; thence north to the northeast corner of section one (1), township two (2) north, range thirty-six (36) east; thence west to the northwest corner of section six (6), township two (2) north, range thirty-five (35) east; thence north to the northeast corner of section one (1), township three (3) north, range thirty-four (34) east; thence west along the township line between townships three (3), and four (4) north, range thirty-four (34) east, to the point of beginning. The county seat is Hardin, Montana.

History: County created Jan. 13, 1913, by petition and election, from portions of Yellowstone and Rosebud counties; boundary with Carbon and Yellowstone fixed

by Ch. 83, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4306, R. C. M. 1921.

4307. BLAINE COUNTY. Beginning at the closing corner common to sections three (3) and four (4), township thirty-seven (37) north, range seventeen (17) east, which is on the international boundary line between the United States and the Dominion of Canada; thence south on lines of public surveys to the southeast corner of section thirty-three (33), township thirty-seven (37) north, range seventeen (17) east; thence west along the ninth standard parallel north to the closing corner common to sections three (3) and four (4), township thirty-six (36) north, range

seventeen (17) east; thence south about twenty-four (24) miles on a line dividing the east from the west half of townships thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) north, range seventeen (17) east; to the southeast corner of section thirty-three (33), township thirty-three (33) north, range seventeen (17) east; thence east on the eighth standard parallel north to the closing corner common to sections two (2) and three (3), township thirty-two (32) north, range seventeen (17) east; thence south about three (3) miles, following the section lines to the southwest corner of section fourteen (14), township thirty-two (32) north, range seventeen (17) east; thence east about one and one-half ($1\frac{1}{2}$) miles to the quarter corner between sections thirteen (13) and twenty-four (24), township thirty-two (32) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner between sections twelve (12) and thirteen (13), township thirty-one (31) north, range seventeen (17) east; thence west one and one-half ($1\frac{1}{2}$) miles to the northwest corner of section fourteen (14), township thirty-one (31) north, range seventeen (17) east; thence south four (4) miles to the southeast corner of section thirty-four (34), township thirty-one (31) north, range seventeen (17) east; thence west about one (1) mile to the southwest corner of said section thirty-four (34); thence south about seven (7) miles to the southwest corner of section three (3), township twenty-nine (29) north, range seventeen (17) east; thence west one and one-half ($1\frac{1}{2}$) miles to the quarter corner on the north boundary of section eight, township twenty-nine (29) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner on the south boundary of section thirty-two (32), township twenty-nine (29) north, range seventeen (17) east; thence east about one (1) mile to the northwest corner of section three (3), township twenty-eight (28) north, range seventeen (17) east; thence south on the section line to the southeast corner of section thirty-three (33), township twenty-five (25) north, range seventeen (17) east; thence west on the sixth standard parallel north to the closing corner common to sections three (3) and four (4), township twenty-four (24) north, range seventeen (17) east; thence south on the section line to the center of the main channel of the Missouri river; thence in an easterly direction along the middle of the main channel of the Missouri river to an intersection with a north and south line through the center of township twenty-three (23) north, range twenty-two (22) east; thence north about eight (8) miles through the center of townships twenty-three (23) and twenty-four (24) north, range twenty-two (22) east, to a point where said line intersects the township line between townships twenty-four (24) and twenty-five (25) north; thence east about three-fourths ($\frac{3}{4}$) of a mile on said township line to a point where said township line intersects the north and south line through the center of township twenty-five (25) north, range twenty-two (22) east; thence northerly along said north and south line through the center of township twenty-five (25) north, range twenty-two (22) east, about three and one-half ($3\frac{1}{2}$) miles to a point where said line intersects the south boundary line, or said south boundary line produced, of the Fort Belknap Indian reservation; thence easterly

along the south boundary line of said Fort Belknap Indian reservation about eleven and one-half ($11\frac{1}{2}$) miles to a point where the south boundary of said reservation intersects the west boundary of the Jefferson national forest; thence northerly about five (5) miles along said west boundary line of said Jefferson national forest to the northwest corner thereof; thence easterly about seven and one-half ($7\frac{1}{2}$) miles along the north boundary of said Jefferson national forest to a point where said boundary line, or the said boundary line produced intersects the range line between ranges twenty-five (25) and twenty-six (26) east; thence northerly about thirty-two (32) miles observing the offsets and corrections along the line between ranges twenty-five (25) and twenty-six (26) east, to a point where said line intersects the center of the channel of Milk river; thence easterly along the center of the channel of Milk river about six (6) miles to a point where the same intersects the section line between sections twenty-seven (27) and twenty-eight (28), township thirty-one (31) north, range twenty-six (26) east; thence north about ten (10) miles along the section line through the center of townships thirty-one (31) and thirty-two (32) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east about one (1) mile on said township line to a point where said township line intersects a north and south line through the center of township thirty-three (33) north, range twenty-six (26) east; thence north about twelve (12) miles through the center of townships thirty-three (33) and thirty-four (34) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-four (34) and thirty-five (35) north; thence east along said township line about three (3) miles to a point where the same intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence north about eighteen (18) miles along said range line observing the offsets and corrections to a point where said range line joins the international boundary line between the United States and Canada; thence west along the international boundary line a distance of about fifty-seven (57) miles to the point of beginning. The county seat is Chinook, Montana.

History: County created by petition and election, effective Feb. 29, 1912, from portion of Chouteau county; portion de- tached by creation of Phillips county, Feb. 5, 1915; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4307, R. C. M. 1921.

4308. BROADWATER COUNTY. Beginning at the intersection of the center of the channel of the Jefferson river, with the Montana principal meridian, and running thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line five hundred (500) feet southeasterly from the main line of the Chicago, Milwaukee & St. Paul railroad, where the same crosses the Missouri river; thence in a general northeasterly direction five hundred (500) feet distant from and parallel to the center line of the Chicago, Milwaukee & St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein five hundred (500) feet distant from, in a northerly direction—the center line of the said Chicago, Milwaukee & St. Paul railroad; thence in a general northeasterly direction parallel

to and five hundred (500) feet distant from the center line of the Chicago, Milwaukee & St. Paul railroad to the west line of section three (3), township four (4) north, range three (3) east; thence north along the west boundary of section three (3), to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), and fourteen (14), township five (5) north, range five (5) east to the center of the main channel of Sixteen Mile creek; thence in a northwesterly direction following the summit of the Big Belt mountains to the head of Cave gulch; thence in a southwesterly direction down Cave Gulch to its intersection with a north and south line one (1) mile east of the Montana principal meridian; thence south running parallel with and one (1) mile distant from the Montana principal meridian to the intersection with the middle of the main channel of the Missouri river; thence in a southeasterly direction following the middle of the main channel of the Missouri river to an intersection with a line extending due east from the north peak of the mountains southeast from Helena, known as Dry Gulch mountains; thence running due west to an intersection with the west line of township nine (9) north, range one (1) west; thence running south along the township line to the southwest corner of township four (4) north, range one (1) west; thence running east along the south line of said township to the Montana principal meridian; thence running south along said Montana principal meridian to the place of beginning. The county seat is Townsend, Montana.

History: County created Feb. 9, 1897; 2796, 2834, Rev. C. 1907; boundaries L. 1897, pp. 45-49, effective March 1, 1897; changed by Ch. 60, L. 1913; boundaries de-
portion added to Lewis and Clark county, fined by Ch. 205, L. 1921; re-en. Sec. 4308,
March 6, 1897, L. 1897, pp. 53-55; Secs. R. C. M. 1921.

4309. CARBON COUNTY. Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), township two (2) south, range twenty-four (24) east, intersects the said river, thence south along the west line of section twenty-one (21) and the west line of sections twenty-eight (28) and thirty-three (33), in said township to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point thereon where it is intersected by the west line of section eight (8), township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8), and the west line of sections seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32) of said township to the southwest corner of section thirty-two (32), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along

the line between ranges twenty-four (24) and twenty-five (25) east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east along the north line of sections thirty (30) and twenty-nine (29), township four (4) south, range twenty-five (25) east to an intersection with the west boundary line of the Crow Indian reservation, township four (4) south, range twenty-five (25) east; thence in a southwesterly direction along the boundary line of said reservation to the southwest corner of said reservation in township seven (7) south, range twenty-five (25) east; thence east along the south boundary line of said reservation to an intersection with the center of the channel of the Big Horn river; thence southwesterly following the center of the channel of the Big Horn river to its intersection with the north boundary line of the state of Wyoming; thence west along the boundary line of the state of Wyoming to its intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the lines between ranges fifteen (15) and sixteen (16) east to the southwest corner of township seven (7) south, range sixteen (16) east; thence east along the south line of township seven (7) south, range sixteen (16) east to a point which, when surveyed, will be the southeast corner of township seven (7) south, range sixteen (16) east; thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township six (6) south, range seventeen (17) east, to the southeast corner of section thirty-four (34), township six (6) south, range seventeen (17) east; thence north along the east line of section thirty-four (34), twenty-seven (27) and twenty-two (22) to the northeast corner of section twenty-two (22), township six (6) south, range seventeen (17) east; thence east along the line between sections fourteen (14) and twenty-three (23), township six (6) south, range seventeen (17) east, to the southeast corner of section fourteen (14), township six (6) south, range seventeen (17) east; thence north along the east line of sections fourteen (14) and eleven (11), township six (6) south, range seventeen (17) east, to the northeast corner of section eleven (11), township six (6) south, range seventeen (17) east; thence east along the south line of section one (1), township six (6) south, range seventeen (17) east, to the southeast corner of said section one (1); thence north along the east line of township six (6) south, range seventeen (17) east, to the northeast corner of section one (1); thence east along the first standard parallel south to the southeast corner of section thirty-six (36), township five (5) south, range seventeen (17) east; thence north along the east line of township five (5) south, range seventeen (17) east to the northeast corner of said section thirty-six (36), township five (5) south, range seventeen (17) east; thence east along the line between sections thirty (30) and thirty-one (31), township five (5) south, range eighteen (18) east, to the southeast corner of section thirty (30), township five (5) south, range eighteen (18) east; thence north along the east line of said section thirty (30) to the northeast corner thereof; thence east along the line between sections twenty (20) and twenty-nine (29), township five (5) south, range eighteen (18) east, to the southeast corner of said section twenty (20); thence north along the east line of said section twenty (20), to the northeast corner thereof; thence east

along the line between sections sixteen (16) and twenty-one (21), township five (5) south, range eighteen (18) east, to the southeast corner of said section sixteen (16); thence north along the east line of said section sixteen (16), township five (5) south, range eighteen (18) east, to the northeast corner thereof; thence east along the line between sections ten (10) and fifteen (15), township five (5) south, range eighteen (18) east, to the southeast corner of said section ten (10); thence north along the east line of said section ten (10), to the northeast corner thereof; thence east along the south line of sections two (2) and one (1), township five (5) south, range eighteen (18) east, to the southeast corner of said section one (1); thence north along the east line of said section one (1) to the southwest corner of section thirty-one (31), township four (4) south, range nineteen (19) east; thence east along the south line of said section thirty-one (31), township four (4) south, range nineteen (19) east, to the southeast corner of said section; thence north along the east line of said section thirty-one (31), to the northeast corner thereof; thence east along the south line of sections twenty-nine (29), twenty-eight (28) and twenty-seven (27), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-seven (27); thence north along the east line of said section twenty-seven (27), township four (4) south, range nineteen (19) east, to the northeast corner thereof; thence east along the south line of sections twenty-three (23) and twenty-four (24), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-four (24); thence east along the south line of section nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24), township four (4) south, range twenty (20) east, to the southeast corner of said section twenty-four (24); thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township three (3) south, range twenty-one (21) east, to the southeast corner of section thirty-three (33), township three (3) south, range twenty-one (21) east; thence north along the east line of section thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16) and nine (9), in said township and range, to an intersection with the center of the channel of the Yellowstone river; thence down the center of the channel of the Yellowstone river to the place of beginning. The county seat is Red Lodge, Montana.

History: County created March 4, 1895; L. 1895, pp. 49-54, effective May 1, 1895; Sec. 4133, Pol. C. 1895; Sec. 2831, Rev. C. 1907; Stillwater county created, including part of, March 24, 1913; boundary line between Yellowstone and Carbon fixed by Ch. 75, L. 1919; boundary line with Big Horn fixed by Ch. 83, L. 1919; boundaries

defined by Ch. 205, L. 1921; re-en. Sec. 4309, R. C. M. 1921.

NOTE.—See 4358.1 and 4358.2, enacted by Ch. 30, L. 1925, for changes in the boundary between Carbon county and Yellowstone county.

4310. CARTER COUNTY. Beginning at the northwest corner of township four (4) north, range fifty-five (55) east, and running east along the north boundary line of township four (4) north, to the northwest corner of section three (3), township four (4) north, range fifty-eight (58) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28),

thirty-three (33) and thirty-four (34), to the northwest corner of section three (3) township three (3) north, range fifty-eight (58) east; thence east along the north line of township three (3) north to the northwest corner of section three (3), township three (3) north, range fifty-nine (59) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township two (2) north, range fifty-nine (59) east; thence east along the north line of township two (2) north to the northwest corner of section three (3), township two (2) north, range sixty-one (61) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21), and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township one (1) north, range sixty-one (61) east; thence east along the north line of township one (1) north, to the intersection of the eastern boundary line of the state of Montana; thence south along said eastern boundary line to the southeast corner of the state of Montana; thence west along the south boundary of the state of Montana to the southwest corner of township nine (9) south, range fifty-five (55) east; thence north along the range line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township six (6) south, range fifty-five (55) east; thence east along the north line of township six (6) south, to the southwest corner of township five (5) south, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township one (1) south, range fifty-five (55) east; thence east along the north line of township one (1) south to the southwest corner of township one (1) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township four (4) north, range fifty-five (55) east, being the point of beginning. The county seat is Ekalaka, Montana.

History: County created by Ch. 56, L. 1917, effective Feb. 22, 1917, out of portion of Fallon county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4310, R. C. M. 1921. Ch. 45, L. 1929 amended the

boundaries between Carter and Powder River counties.

NOTE—See also Sec. 4340.1 and 4340.2 establishing the boundary line between Powder River and Carter counties.

4311. CASCADE COUNTY. Beginning at the intersection of the center of the channel of the Missouri river with the north line of township twenty-two (22) north, range six (6) east; thence running west on the line between townships twenty-two (22) and twenty-three (23) north, to the northwest corner of township twenty-two (22) north, range one (1) east; thence south along the Montana principal meridian to the north line of township twenty-one (21) north; thence west along the north line of said township twenty-one (21) north, to the northwest corner of township twenty-one (21) north, range two (2) west; thence south to the middle of the main channel of Sun river; thence westerly up the middle of the main channel of the Sun river to the Helena guide meridian; thence south along the Helena guide meridian to its intersection with the middle of the main

channel of Dearborn river; thence down the middle of the main channel of Dearborn river to the middle of the main channel of the Missouri river; thence down the middle of the main channel of the Missouri river to an intersection with the line dividing the north from the south half of section twenty (20), township sixteen (16) north, range two (2) west; thence running east on the half section line to the quarter corner on the east line of section twenty-four (24), township sixteen (16) north, range two (2) west; thence running south to the southwest corner of township fourteen (14) north, range one (1) west; thence running east to the southeast corner of township fourteen (14) north, range one (1) east; thence north to the southeast corner of township fifteen (15) north, range one (1) east; thence east to the southeast corner of township fifteen (15) north, range four (4) east; thence north to the southwest corner of township sixteen (16) north, range five (5) east; thence east along the line dividing townships fifteen (15) and sixteen (16) north, to the summit of the Little Belt mountains; thence following the summit of the Little Belt mountains in a southeasterly direction to an intersection with a line dividing ranges eight (8) and nine (9) east; thence running north along said line to the northeast corner of township fifteen (15) north, range eight (8) east; thence running west to the southwest corner of township sixteen (16) north, range eight (8) east; thence north along the range line between ranges seven (7) and eight (8) east, as corrected by the United States government survey thereof to the quarter ($\frac{1}{4}$) corner on the east boundary of section thirteen (13), township seventeen (17) north, range seven (7) east; thence west one-half ($\frac{1}{2}$) mile to the center of said section thirteen (13); thence north one (1) mile to the center of section twelve (12), township seventeen (17) north, range seven (7) east; thence west one-half ($\frac{1}{2}$) mile to the quarter ($\frac{1}{4}$) corner on the west boundary of said section twelve (12); thence north along section lines a distance of four (4) miles to the quarter ($\frac{1}{4}$) corner on the west boundary of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence east a distance of three-fourths ($\frac{3}{4}$) of a mile to the northeast corner of the northwest quarter of the southeast quarter (N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$) of said section twenty-four (24); thence south a distance of three-fourths ($\frac{3}{4}$) of a mile to the southwest corner of the northeast quarter of the northeast quarter (N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence east a distance of one-fourth ($\frac{1}{4}$) of a mile to the southeast corner of the northeast quarter of the northeast quarter (N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$) of said section twenty-five (25); thence north along the range line between ranges seven (7) and eight (8) east a distance of four and one-fourth ($4\frac{1}{4}$) miles, more or less, to the northwest corner of township eighteen (18) north, range eight (8) east; thence east along the township lines between townships eighteen (18) and nineteen (19) north, to the northeast corner of said township eighteen (18) north, range eight (8) east; thence north along the range line between ranges eight (8) and nine (9) east to the northeast corner of township nineteen (19) north, range eight (8) east; thence west along the township line to the northwest corner of said township nineteen (19) north, range eight (8) east; thence north

to the northeast corner of township twenty (20) north, range seven (7) east; thence west along the fifth standard parallel north to a point in the middle of the main channel of Belt creek; thence in a northwesterly direction following the main channel of Belt creek to the middle of the main channel of the Missouri river; thence along the main channel of the Missouri river to the place of beginning. The county seat is Great Falls, Montana.

History: County created Sept. 12, 1887, Ex. L. 1887, p. 104, effective third Monday of Dec. 1887; Sec. 4122, Pol. C. 1895; boundaries extended March 1, 1897, L. 1897, pp. 50-52; portion added to Lewis and Clark, March 6, 1897, L. 1897, pp. 53-55; portion of Fergus county added Feb. 28, 1899, L. 1899, p. 41; portion of Meagher

county added, March 6, 1899, L. 1899, p. 43; portion of Chouteau county added March 3, 1903, Ch. 51, L. 1903; Secs. 2796, 2813, 2814, 2815, 2817, 2818, Rev. C. 1907; Judith Basin county created from portion of, Dec. 10, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4311, R. C. M. 1921.

4312. CHOUTEAU COUNTY. Beginning at the center of the channel of the Missouri river opposite the mouth of Arrow creek; thence following up the center of Arrow creek to an intersection with the north line of section fifteen (15), township nineteen (19) north, range twelve (12) east; thence running west along the north line of sections fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township nineteen (19) north, range twelve (12) east, and the north line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township nineteen (19) north, range eleven (11) east, to the northwest corner of said section eighteen (18); thence running west along the south line of sections twelve (12), eleven (11), ten (10), nine (9), eight (8) and seven (7), township nineteen (19) north, ranges ten (10) and nine (9) east, to the southwest corner of section seven (7), township nineteen (19) north, range nine (9) east; thence running north to the northeast corner of township nineteen (19) north, range eight (8) east; thence running west along the line between townships nineteen (19) and twenty (20) north to the southeast corner of township twenty (20) north, range seven (7) east; thence running north to the northeast corner of said township; thence west along the fifth standard parallel north, to a point in the middle of the main channel of Belt creek; thence in a northwesterly direction following the main channel of Belt creek to the middle of the main channel of the Missouri river; thence along the main channel of the Missouri river to an intersection with the north line of township twenty-two (22) north, range six (6) east; thence running west along the line between townships twenty-two (22) and twenty-three (23) north, to its intersection with the Montana principal meridian; thence running north along the Montana principal meridian to the southwest corner of section nineteen (19), township twenty-six (26) north, range one (1) east; thence east along the section line to the southeast corner of section twenty-four (24), township twenty-six (26) north, range two (2) east; thence north along the line between ranges two (2) and three (3) east, to the northwest corner of township twenty-seven (27) north, range three (3) east; thence running east along the line between townships twenty-seven (27) and twenty-eight (28) north, to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seven (7) east; thence running north along the line dividing the east from the west half of said

township to the northwest corner of section three (3), township twenty-eight (28) north, range seven (7) east; thence running east along the line between townships twenty-eight (28) and twenty-nine (29) north to the southeast corner of township twenty-nine (29) north, range eight (8) east; thence running north to the northwest corner of township twenty-nine (29) north, range nine (9) east; thence running east on the line between townships twenty-nine (29) and thirty (30) north, to the northeast corner of township twenty-nine (29) north, range fourteen (14) east; thence running south along the line between ranges fourteen (14) and fifteen (15) east, to the southwest corner of township twenty-nine (29) north, range fifteen (15) east; thence running east along the seventh standard parallel north to the northeast corner of township twenty-eight (28) north, range fifteen (15) east; thence running south along the east line of said township to the southeast corner thereof; thence running east on the line dividing townships twenty-seven (27) and twenty-eight (28) north to the northeast corner of section four (4), township twenty-seven (27) north, range seventeen (17) east; thence south along the line dividing the west from the east half of townships twenty-seven (27), twenty-six (26) and twenty-five (25) north, range seventeen (17) east, to the southeast corner of section thirty-three (33) township twenty-five (25) north, range seventeen (17) east; thence west on the sixth standard parallel north to the closing corner common to sections three (3) and four (4), township twenty-four (24) north, range seventeen (17) east; thence south on the line dividing the east from the west half of townships twenty-four (24) and twenty-three (23) north, range seventeen (17) east to the center of the main channel of the Missouri river; thence in a westerly direction following the center of said channel to the place of beginning. The county seat is Fort Benton, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 531; Sec. 9, Cod. Stat. 1871, pp. 431-2; territory added Feb. 5, 1876, L. 1876; p. 47, Sec. 331, 5th Div. Rev. Stat. 1879; Sec. 738, 5th Div. Comp. Stat. 1887; Cascade county created, including part of Chouteau, Sept. 12, 1887, Ex. L. 1887, pp. 104-109; Teton created, including part of Chouteau, Feb. 7, 1893, L. 1893, pp. 205-209; Secs. 4115, 4124, 4128, Pol. C. 1895; portion added to Cascade county March 1, 1897, L. 1897, p. 50-2; portion added to Cascade county March 3, 1903, L. 1903, Ch. 51; spelling of name changed to Chouteau by Ch. 74, L. 1903; bounda-

ries of Fergus county extended, Ch. 28, L. 1907; Secs. 2802, 2803, 2819, 2821 and 2826, Rev. C. 1907; Hill county created, including part of Chouteau, Feb. 28, 1912; Blaine county created, including part of Chouteau, Feb. 29, 1912; Pondera county created, April 1, 1919, from part of, by Ch. 22, L. 1919; Liberty county created Feb. 11, 1920, from part of; boundaries defined by Ch. 205, L. 1921; boundary between Chouteau and Teton changed and portion added to Teton by Ch. 174, L. 1921, effective March 5, 1921; re-en. Sec. 4312, R. C. M. 1921.

See Secs. 4362 to 4368.

4313. CUSTER COUNTY. Beginning at the northwest corner of section nineteen (19), township ten (10) north, range fifty-six (56) east; thence running at right angles due west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), nineteen (19), township ten (10) north, range fifty-five (55) east, to the northwest corner of section nineteen (19), township ten (10) north, range fifty-five (55) east; thence running at right angles due south to the southwest corner of township ten (10) north, range fifty-five (55) east; thence running due west along the south line of township ten (10) north, range fifty-four (54) east to the northwest corner of township nine

(9) north, range fifty-four (54) east; thence due south two (2) miles to the southeast corner of section twelve (12), township nine (9) north, range fifty-three (53) east; thence due west along section lines to the southwest corner of section seven (7), township nine (9) north, range fifty-two (52) east; thence due north along the lines between ranges fifty-one (51) and fifty-two (52), to the southeast corner of township ten (10) north, range fifty-one (51) east; thence due west along the north line of township nine (9) north, to the southwest corner of section thirty-three (33), township ten (10) north, range fifty (50) east; thence at right angles due north two (2) miles to the northeast corner of section twenty-nine (29), township ten (10) north, range fifty (50) east; thence at right angles due west to the northwest corner of section thirty (30), township ten (10) north, range fifty (50) east; thence along the line between ranges forty-nine (49) and fifty (50), to the northeast corner of township ten (10) north, range forty-nine (49) east; thence at right angles due west to the northwest corner of section four (4), township ten (10) north, range forty-nine (49) east; thence north to the northwest corner of section four (4), township eleven (11) north, range forty-nine (49) east; thence west to the southwest corner of township twelve (12) north, range forty-nine (49) east; thence north to the northwest corner of township twelve (12) north, range forty-nine (49) east; thence west to the southwest corner of township thirteen (13) north, range forty-seven (47) east; thence north along the west line of township thirteen (13) north, range forty-seven (47) east, to the northeast corner of section twenty-five (25), township thirteen (13) north, range forty-six (46) east; thence west along the section line to the southwest corner of section nineteen (19), township thirteen (13) north, range forty-five (45) east; thence south to the southeast corner of township thirteen (13) north, range forty-four (44) east; thence west to the northwest corner of township twelve (12) north, range forty-five (45) east; thence south to the southwest corner of township nine (9) north, range forty-five (45) east; thence west to the northwest corner of township eight (8) north, range forty-five (45) east; thence south to the southwest corner of township five (5) north, range forty-five (45) east; thence west to the northwest corner of township four (4) north, range forty-five (45) east; thence south to the southwest corner of township one (1) north, range forty-five (45) east; thence east along the line between township one (1) north and one (1) south to the southeast corner of township one (1) north, range fifty-four (54) east; thence north to the northeast corner of township four (4) north, range fifty-four (54) east; thence east to the southwest corner of section thirty-one (31), township five (5) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55) east to the northwest corner of township six (6) north, range fifty-five (55) east; thence west along the line between townships six (6) north and seven (7) north to the southwest corner of township seven (7) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55) east, to the northwest corner of township eight (8) north, range fifty-five (55) east; thence east along the second standard parallel north to the southwest corner of township nine (9) north, range fifty-six (56) east; thence

north along the line between ranges fifty-five (55) and fifty-six (56) east, to the place of beginning. The county seat is Miles City, Montana.

History: County created under name of Big Horn, Feb. 2, 1865, Bannack Stat., p. 531; Dawson county created out of, Jan. 15, 1869, L. 1869, p. 102; Sec. 11, p. 432, Cod. Stat. 1871; name changed to Custer, Feb. 16, 1877, L. 1877, p. 425; Sec. 333, 5th Div. Rev. Stat. 1879; boundary changed March 8, 1883, L. 1883, p. 99; Yellowstone created from part of, Feb. 26, 1883, L. 1883, pp. 119-122; Sec. 740, 5th Div. Comp. Stat. 1887; Sec. 4117, Pol. C. 1895; Crow Indian reservation W. of Big Horn river

added to Yellowstone, March 5, 1897, L. 1897, p. 55; Rosebud county created out of, Feb. 11, 1901, L. 1901, pp. 97-101; Sec. 2805, 2809, 2840, Rev. C. 1907; Fallon county created out of, Dec. 9, 1913; Prairie county created, including part of, Feb. 5, 1915; part added to Prairie by Ch. 139, L. 1917; Powder River county created out of part of by Ch. 141, L. 1919, effective April 1, 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4313, R. C. M. 1921.

4314. DANIELS COUNTY. Commencing at the intersection of the range line between ranges forty-two (42) and forty-three (43) east with the international boundary line between the United States and the Dominion of Canada; thence east along said boundary line a distance of about forty-eight (48) miles to the point where the range line between ranges fifty (50) and fifty-one (51) east intersects said international boundary line; thence south on said range line between ranges fifty (50) and fifty-one (51) east, a distance of about six (6) miles to the southeast corner of township thirty-seven (37) north, range fifty (50) east; thence east on the township line between townships thirty-seven (37) and thirty-six (36) north, range fifty-one (51) east, a distance of one (1) mile, more or less, to the line between sections three (3) and four (4), township thirty-six (36) north, range fifty-one (51) east; thence directly south on the section line a distance of about eighteen (18) miles to the southeast corner of section thirty-three (33), township thirty-four (34) north, range fifty-one (51) east; thence east to the township line between townships thirty-three (33) and thirty-four (34) north, range fifty-one (51) east, for a distance of three (3) miles, more or less, to the northeast corner of township thirty-three (33) north, range fifty-one (51) east; thence south on the line between ranges fifty-one (51) and fifty-two (52) east, a distance of six (6) miles to the southeast corner of township thirty-three (33) north, range fifty-one (51) east; thence west on the township line between townships thirty-two (32) and thirty-three (33), a distance of forty-eight (48) miles to the southwest corner of township thirty-three (33) north, range forty-four (44) east; thence north on the range line between ranges forty-three (43) and forty-four (44), a distance of eighteen (18) miles to the southeast corner of township thirty-six (36) north, range forty-three (43) east; thence west a distance of six (6) miles on the township line between townships thirty-five (35) and thirty-six (36) north, to the southwest corner of township thirty-six (36) north, range forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43) east, a distance of six (6) miles, more or less, to the township line between township thirty-six (36) and thirty-seven (37) north; thence east along said township line two (2) miles, more or less, to the southeast corner of township thirty-seven (37) north, range forty-two (42) east; thence north on the range line between ranges forty-two (42) and forty-three (43) east six miles, more or less, to the place of beginning. The county seat is Scobey, Montana.

History: County created by petition and election, effective Aug. 30, 1920, from portions of Sheridan and Valley; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4314, R. C. M. 1921.

4315. DAWSON COUNTY. Beginning at the point of intersection of the center of the channel of the Yellowstone river with a line drawn east and west through the center of section fifteen (15) of township eighteen (18) north, range fifty-seven (57) east; thence east through the center of said section to a point of intersection with the east line of said section; thence south one-half ($\frac{1}{2}$) mile along the east line of said section fifteen (15), township eighteen (18) north, range fifty-seven (57) east, to the southeast corner of said section; thence east one-half ($\frac{1}{2}$) mile along the south line of section fourteen (14), township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-three (23) township eighteen (18) north, range fifty-seven (57) east; thence east one-half ($\frac{1}{2}$) mile to a point of intersection with the east line of said section twenty-three (23); thence south one-half ($\frac{1}{2}$) mile along the east line of said section twenty-three (23) to the southeast corner of said section twenty-three (23); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-four (24), township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-five (25), township eighteen (18) north, range fifty-seven (57) east; thence one-half ($\frac{1}{2}$) mile east to the east line of said section twenty-five (25); thence south one (1) mile along the west line of sections thirty (30) and thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence south one (1) mile to the center of section six (6), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of section six (6); thence south one-half ($\frac{1}{2}$) mile along the east line of said section six (6); thence east one-half ($\frac{1}{2}$) mile along the south line of section five (5), township seventeen (17) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile to the center of section eight (8), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of said section eight (8); thence south two (2) miles along the east line of sections eight (8), seventeen (17) and twenty (20), all in township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section twenty-one (21), township seventeen (17) north, range fifty-eight (58) east; thence south one (1) and one-half ($\frac{1}{2}$) miles through the center of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east, to the south line of said section twenty-eight (28); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east to the southeast corner of said section twenty-eight (28); thence south one (1) mile along the east line of section thirty-three (33), township seventeen (17) north, range fifty-eight (58) east to the southeast corner of said section thirty-three (33); thence east and along the north line of section one (1), township sixteen (16) north, range fifty-eight (58) east, to the quarter corner on the north line of the said section one (1); thence south three (3) miles through the centers of

sections one (1), twelve (12) and thirteen (13), all in township sixteen (16) north, range fifty-eight (58) east, to the south line of said section thirteen (13); thence east one-half ($\frac{1}{2}$) mile along the south line of said section thirteen (13), township sixteen (16) north, range fifty-eight (58) east, to the southeast corner of said section thirteen (13); thence south six and one-half ($6\frac{1}{2}$) miles along the range line between ranges fifty-eight (58) and fifty-nine (59), to the quarter corner of the east line of section twenty-four (24), township fifteen (15) north, range **fifty-eight** (58) east; thence west one (1) mile through the center of said section twenty-four (24) to the west line of said section twenty-four (24); thence south two and one-half ($2\frac{1}{2}$) miles along the east line of sections twenty-three (23), twenty-six (26) and thirty-five (35), all in township fifteen (15) north, range fifty-eight (58) east, to the southeast corner of said section thirty-five (35); thence west and along the township line one-half ($\frac{1}{2}$) mile to the quarter corner on the north line of section two (2), township fourteen (14) north, range fifty-eight (58) east; thence south one mile through the center of said section two (2) to the south line of said section two (2); thence west along the south line of said section two (2) one-half ($\frac{1}{2}$) mile to the southwest corner of said section two (2); thence south one (1) mile and along the east line of section ten (10), township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of said section ten (10); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section ten (10), to the quarter corner on the south line of said section ten (10); thence south one (1) **mile through the** center of section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the south line of the said section fifteen (15); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the southwest corner of said section fifteen (15) thence south one (1) mile along the west line of section twenty-two (22) of township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of section twenty-one (21), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile along the south line of said section twenty-one (21); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile to the west line of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile along the west line of said section twenty-eight (28), to the southwest corner of said section twenty-eight (28); thence west one-half ($\frac{1}{2}$) mile and along the north line of section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the quarter corner on the north line of said section thirty-two; thence south one (1) mile through the center of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the south line of said section thirty-two (32); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section thirty-two (32), to the southwest corner of said section thirty-two (32); thence south one (1) mile and along the east line of section six (6), township thirteen (13) north, range fifty-eight (58) east, to the southeast corner of said section six (6); thence west one (1) mile

and along the south line of section six (6), to the southwest corner of the said section six (6); thence south one (1) mile and along the east line of section twelve (12), township thirteen (13) north, range fifty-seven (57) east, to the southeast corner of said section twelve (12); thence west one (1) mile and along the south line of said section twelve (12), to the southwest corner of said section twelve (12); thence south one-half ($\frac{1}{2}$) mile and along the east line of section fourteen (14), township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the east line of the said section fourteen (14); thence west one-half ($\frac{1}{2}$) mile to the center of the said section fourteen (14); thence south one-half ($\frac{1}{2}$) mile to a point of intersection with the south line of said section fourteen (14); thence at right angles west one (1) mile along the south line of sections fourteen (14) and fifteen (15), all in township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the south line of said section fifteen (15); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east; thence west one-half ($\frac{1}{2}$) mile to a point on the west line of said section twenty-two (22); thence south one-half ($\frac{1}{2}$) mile along the west line of the said section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east, to the southwest corner of said section twenty-two (22); thence west along the south line of sections twenty-one (21), twenty (20) and nineteen (19), township thirteen (13) north, range fifty-seven (57) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township thirteen (13) north, range fifty-six (56) east and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township thirteen (13) north, range fifty-five (55) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) of township thirteen (13) north, range fifty-four (54) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27) and twenty-eight (28) of township thirteen (13) north, range fifty-three (53) east, to the southwest corner of section twenty-one (21) of said township and range; thence north along section lines to the north east corner of section seventeen (17), township thirteen (13) north, range fifty-three (53) east; thence west one (1) mile to the south west corner of section eight (8), township thirteen (13) north, range fifty-three (53) east; thence north one (1) mile to the southeast corner of section six (6), township thirteen (13) north, range fifty-three (53) east; thence west one (1) mile to the southwest corner of said section six (6); thence north one (1) mile to the northeast corner of township thirteen (13) north, range fifty-two (52) east; thence west along the north line of township thirteen (13) north to the southeast corner of township fourteen (14) north, range fifty-one (51) east; thence running north to the northeast corner of section thirteen (13) of said township and range; thence running west to the southwest corner of section seven (7), township fourteen (14) north, range fifty-one (51) east; thence running north along the range line between ranges fifty (50) and fifty-one (51) east to the northeast corner of township sixteen (16)

north, range fifty (50) east; thence running west along the fourth standard parallel north to the southeast corner of township seventeen (17) north, range forty-nine (49) east; thence north along the range line between ranges forty-nine (49) and fifty (50) east, to the northwest corner of township twenty (20) north, range fifty (50) east; thence east along the north line of township twenty (20) north, to the southeast corner of township twenty-one (21) north, range forty-nine (49) east; thence north along the line between ranges forty-nine (49) and fifty (50) east, to the northwest corner of township twenty-three (23) north, range fifty (50) east; thence east along the north line of township twenty-three (23) north, to the southeast corner of township twenty-four (24) north, range fifty (50) east; thence south on the line between ranges fifty (50) and fifty-one (51) east, to the southwest corner of township twenty-three (23) north, range fifty-one (51) east; thence east along the south line of township twenty-three (23) north, ranges fifty-one (51) and fifty-two (52) east, to the northwest corner of township twenty-two (22) north, range fifty-three (53) east; thence south along the line between ranges fifty-two (52) and fifty-three (53) east, to the southwest corner of township twenty-two (22) north, range fifty-three (53) east; thence east along the line between townships twenty-one (21) and twenty-two (22) north, to the northwest corner of township twenty-one (21) north, range fifty-six (56) east; thence south on the line between ranges fifty-five (55) and fifty-six (56) east, to the southwest corner of said township twenty-one (21) north, range fifty-six (56) east; thence east along the line between townships twenty (20) and twenty-one (21) north, to the northwest corner of township twenty (20) north, range fifty-seven (57) east; thence south along the line between ranges fifty-six (56) and fifty-seven (57) east, to the southwest corner of township nineteen (19) north, range fifty-seven (57) east; thence east along the line between townships eighteen (18) and nineteen (19) north, to an intersection with the center of the channel of the Yellowstone river; thence in a southwesterly direction following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Glendive, Montana.

History: County created Jan. 15, 1869, L. 1868-69, p. 102; Cod. Stat. 1871, Sec. 10, p. 432; 5th Div. Rev. Stat. 1879, Sec. 332; southern boundary changed March 8, 1883, L. 1883, p. 99; Sec. 739, 5th Div. Comp. Stat. 1887; Sec. 4116, Pol. C. 1895; Sec. 2804, Rev. C. 1907; Valley county detached Feb. 6, 1893 (p. 202, L. 1893); Sec. 4125, Pol. C. 1895; Sec. 2823, Rev. C. 1907; Richland county detached May 27, 1914; Wibaux county created Aug. 17, 1914, part

of Dawson; Prairie county created Feb. 5, 1915, part of Dawson; boundary between Dawson and Rosebud changed by Ch. 36, L. 1917; Garfield county created by Ch. 4, L. 1919, effective April 1, 1919, from part of Dawson; McCone county created by Ch. 33, L. 1919, effective April 1, 1919, from part of Dawson; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4315, R. C. M. 1921.

4316. DEER LODGE COUNTY. Beginning at a point where the line of the divide between the headwaters of Brown's gulch and Dry Cottonwood creek intersects the continental divide which is approximately the quarter corner on the east boundary of section twenty-three (23), township five (5) north, range eight (8) west; running thence southwesterly along said divide between the headwaters of Brown's gulch and Dry Cottonwood creek to an intersection with the first standard parallel north which is the southwest corner of section thirty-six (36), township five (5)

north, range nine (9) west; thence running west along said standard parallel to the point where the same intersects the Deer Lodge guide meridian; thence south to the southeast corner of township four (4) north, range ten (10) west; thence west to the south corner common to sections thirty-two (32) and thirty-three (33), township four (4) north, range ten (10) west; thence in a southerly and westerly direction to the top of the divide between Willow creek and Beef strait; thence along the top of said divide to the point where it intersects with the main range of the Rocky mountains; thence following the summit of said main range of the Rocky mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear creek and Johnson creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole river; thence up along the center of the channel of the Big Hole river to the point where it is intersected by Pintler creek; thence up the center of the channel of Pintler creek to the summit of the Rocky mountains; thence in a northeasterly direction along the summit of the Rocky mountains to the line dividing ranges thirteen (13) and fourteen (14) west; thence north along said line to the northeast corner of township five (5) north, range fourteen (14) west; thence running east by township lines to the line dividing ranges eleven (11) and twelve (12) west; thence north to the southwest corner of section eighteen (18), township six (6) north, range eleven (11) west; thence east following section lines to the southeast corner of section fourteen (14), township six (6) north, range eight (8) west; thence north to the northeast corner of section two (2), township six (6) north, range eight (8) west; thence east to the summit of the main range of the Rocky mountains; thence in a southerly direction along the main range of the Rocky mountains to the place of beginning. The county seat is Anaconda, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529; boundaries established Dec. 10, 1867, L. 1867, p. 102; Sec. 2, Cod. Stat. 1871, p. 429; boundaries changed Feb. 5, 1876, L. 1876, p. 46; Sec. 324, 5th Div. Rev. Stat. 1879; Silver Bow created from portion of, L. 1881, p. 85; Sec. 731, 5th Div. Comp. Stat. 1887; boundary changed March 5, 1891, L. 1891, pp. 224-5; Granite county created from portion of, March 2, 1893, L. 1893, pp. 212-217; Sec. 4108, 4132, Pol. C. 1895; portion added to

Lewis and Clark, Feb. 28, 1899, L. 1899, p. 47; portion added to Flathead, March 6, 1899, L. 1899, p. 47; Powell county created out of, Jan. 31, 1901, L. 1901, p. 101; part of Silver Bow added to, Ch. 62, L. 1903, effective June 15, 1903; Secs. 2789, 2798, 2822, 2830, Rev. C. 1907; part added to Silver Bow by Ch. 21, L. 1917, effective May 1, 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4316, R. C. M. 1921.

4317. FALLON COUNTY. Beginning at the northwest corner of township ten (10) north, range fifty-six (56) east; thence running south along the west line of townships ten (10) and nine (9) north, range fifty-six (56) east, to the southwest corner of section thirty-one (31), township nine (9) north, range fifty-six (56) east; thence west along the second standard parallel north to the northwest corner of section six (6), township eight (8) north, range fifty-five (55) east; thence south along the west line of townships eight (8) and seven (7) north, range fifty-five (55) east, to the southwest corner of said township seven (7) north, range fifty-five (55) east; thence east along the south boundary line of township seven (7) north, range fifty-five (55) east, to the northwest corner

of section six (6), township six (6) north, range fifty-five (55) east; thence south along the west boundary line of townships six (6) and five (5) north, range fifty-five (55) east, to the southwest corner of section thirty-one (31), township five (5) north, range fifty-five (55) east; thence running east along the north boundary line of township four (4) north, to the northwest corner of section three (3), township four (4) north, range fifty-eight (58) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township three (3) north, range fifty-eight (58) east; thence east along the north line of township three (3) north, to the northwest corner of section three (3), township three (3) north, range fifty-nine (59) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township two (2) north, range fifty-nine (59) east; thence east along the north line of township two (2) north to the northwest corner of section three (3), township two (2) north, range sixty-one (61) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township one (1) north, range sixty-one (61) east; thence east along the north line of township one (1) north to the intersection of the eastern boundary line of the state of Montana; thence running north along the boundary line between Montana and North Dakota to an intersection with the south line of section four (4), township ten (10) north, range sixty-one (61) east; thence west along section lines to the southwest corner of section six (6), township ten (10) north, range fifty-nine (59) east; thence north along the line between ranges fifty-eight (58) and fifty-nine (59) east to the southwest corner of section thirty (30), township eleven (11) north, range fifty-nine (59) east; thence west three (3) miles to the southwest corner of section twenty-seven (27), township eleven (11) north, range fifty-eight (58) east; thence north along the west line of said section twenty-seven (27) to the northwest corner thereof; thence west nine (9) miles along section lines to the southwest corner of section nineteen (19), township eleven (11) north, range fifty-seven (57) east; thence south to the southeast corner of township eleven (11) north, range fifty-six (56) east; thence west along the south line of township eleven (11) north, to the northwest corner of township ten (10) north, range fifty-six (56) east, being the place of beginning. The county seat is Baker, Montana.

History: County created by petition and election, effective Dec. 9, 1913, from portion of Custer county; Wibaux county created from portion of, Aug. 7, 1914; Prairie county created from portion of,

Feb. 5, 1915; Carter county created from portion of, Ch. 56, L. 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4317, R. C. M. 1921.

4318. FERGUS COUNTY. Beginning at the middle of the main channel of the Missouri river opposite the middle of the main channel of

the Musselshell river; running thence up the middle of the main channel of the Musselshell river to its intersection with the township line between townships eleven (11) and twelve (12) north; thence west along said township line to the line between ranges eighteen (18) and nineteen (19) east; thence south along said range line to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township eleven (11) north, ranges eighteen (18) and seventeen (17) and sixteen (16) east, to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7) and six (6) in said township eleven (11) north of range sixteen (16) east, to the northeast corner of the southeast quarter of section six (6) in said township eleven (11) north of range sixteen (16) east; thence west to the northwest corner of said southeast quarter of section six (6), in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter of section nine (9) in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter of section four (4), township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter of section two (2), township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north to the southeast corner of section thirty-four (34), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), township thirteen (13)

north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east; thence west to the northwest corner of township eighteen (18) north, range eleven (11) east; thence north to the northwest corner of section eighteen (18), in township nineteen (19) north, range eleven (11) east; thence east to a point at the middle of Arrow creek; thence in a northeasterly direction down the middle of Arrow creek to a point in the center of the main channel of the Missouri river opposite the mouth of Arrow creek; thence down the middle of the main channel of the Missouri river to the point of beginning. The county seat is Lewistown, Montana.

History: County created March 12, 1885, L. 1885, p. 78, effective Dec. 1, 1886; 5th Div. Comp. Stat. 1887, Sec. 743, Cascade county detached Sept. 12, 1887, Ex. L. 1887, p. 104; Pol. C. 1895; Sec. 4120, portion added to Cascade, March 1, 1897, L. 1897, p. 50; also portion added to Cascade, Feb. 28, 1899, L. 1899, p. 41; boundaries extended Feb. 21, 1907, Ch. 28, L. 1907; Sec. 2811, Rev. C. 1907; Musselshell county created from portion of Fergus, Ch. 25,

L. 1911, effective March 1, 1911; Judith Basin county created Dec. 10, 1920, from portion of Fergus; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4318, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1925.

NOTE.—Amendment of this section by Ch. 93, L. 1925, held unconstitutional in State ex rel. Foot v. Burr et al., 73 M 586, 238 P 585. Section here given as in the 1921 code, before amendment.

4319. FLATHEAD COUNTY. Commencing on the forty-ninth (49th) parallel of latitude at a point where the same is intersected by the summit of the main range of the Rocky mountains; thence in a southerly direction following the summit of said mountain range to an intersection with the south line of the north tier of sections of township twenty-one (21) north; thence running westerly along said line to the corner common to sections five (5), six (6), seven (7) and eight (8), township twenty-one (21) north, range twenty-three (23) west; thence running north ten (10) miles along the section line situated one (1) mile east of the line dividing range twenty-three (23) west and range twenty-four (24) west to the southeast corner of section eighteen (18), township twenty-three (23) north, range twenty-three (23) west; thence running west along the section line one (1) mile to the southwest corner of said section eighteen (18); thence running north on the range line to the sixth standard parallel north; thence west and along said parallel to the southeast corner of section thirty-one (31), township twenty-five (25) north, range twenty-six (26) west; thence north along said section line to the southeast corner of section eighteen (18), township twenty-six (26) north, range twenty-six (26) west; thence west one (1) mile to the southwest corner of said section eighteen (18); thence north to the northeast corner of township twenty-seven (27) north, range twenty-seven (27)

west; thence west to the southwest corner of section thirty-four (34), township twenty-eight (28) north, range twenty-seven (27) west; thence north to the northwest corner of section three (3) in township twenty-eight (28) north, range twenty-seven (27) west; thence east to the southeast corner of township twenty-nine (29) north, range twenty-six (26) west; thence north along the Horse Plains guide meridian to the northeast corner of township thirty-two (32) north, range twenty-six (26) west; thence west to the southeast corner of township thirty-three (33) north, range twenty-six (26) west; thence north along the Horse Plains guide meridian to the northeast corner of township thirty-three (33) north, range twenty-six (26) west; thence east about twelve (12) miles to the summit of the watershed dividing the Stillwater river and White Fish creek; thence in a northwesterly direction along said water shed to its intersection with the forty-ninth parallel of latitude; thence east along said parallel to the place of beginning. The county seat is Kalispell, Montana.

History: County created by act of Feb. 6, 1893, L. 1893, p. 198, effective March 1, 1893, Sec. 4123, Pol. C. 1895; Sec. 2820, Rev. C. 1907; portion of Deer Lodge county added by act of March 6, 1899, L. 1899,

p. 47; Sec. 2822, Rev. C. 1907; Lincoln county detached by Ch. 133, L. 1909; boundaries changed by Ch. 42, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4319, R. C. M. 1921.

4320. GALLATIN COUNTY. Beginning at the intersection of the continental divide, the same being the boundary line between the state of Montana and the state of Idaho, with what will be when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be when surveyed, the west line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9) and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section thirty-four (34), township five (5) south, range three (3) east; thence north along what will be, when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2) south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section thirteen (13); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the

southwest corner of section three (3); thence north to the northwest corner of section three (3), all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19), all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five (5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36), township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of Jefferson river; thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line 500 feet southeasterly from the main line of the Chicago, Milwaukee and St. Paul railroad where the same crosses the Missouri river; thence in a general northeasterly direction 500 feet distant from and parallel to the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein 500 feet distant from, in a northerly direction, the center line of the said Chicago, Milwaukee and St. Paul railroad; thence in a general northeasterly direction parallel to and 500 feet distant from the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section three (3), township four (4) north, range three (3) east; thence north along the west boundary of section three (3) to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13), township five (5) north, range five (5) east, to the west quarter corner of section eighteen (18), township five (5) north, range six (6) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range seven (7) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7)

east; thence south along the township line to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11), and ten (10), to the east quarter corner of section nine (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone national park; thence west along the said north boundary to the northwest corner of the Yellowstone national park; thence south along the west boundary of the Yellowstone national park to its intersection with the Continental divide, the same being the boundary line between the state of Montana and the state of Idaho; thence northwesterly along said Continental divide to the point of beginning. The county seat is Bozeman, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 530; Meagher county created out of, Nov. 16, 1867, L. 1867, p. 99; Sec. 8, Cod. Stat. 1871, p. 431; N. boundary changed, Feb. 13, 1874, p. 67; Sec. 330, 5th Div. Rev. Stat. 1879; boundaries extended Feb. 14, 1881, L. 1881, p. 124; Yellowstone county created out of part of, Feb. 25, 1883, L. 1883, pp. 119-122; Sec. 737, 5th Div. Comp. Stat. 1887; Park

county created out of, Feb. 23, 1887, Comp. Stat. 1887, p. 1238; Sec. 4114, Pol. C. 1895; Sec. 2801, Rev. C. 1907; boundaries established, Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4320, R. C. M. 1921.

References

Yellowstone Park Transp. Co. v. Galatin County et al., 27 F 2d 410.

4321. GARFIELD COUNTY. Beginning at the point of intersection of the middle of the Missouri river with the north line of township twenty-five (25) north, range forty-one (41) east; thence running east along the north line of said township to the northeast corner thereof; thence due south along the range line between ranges forty-one (41) and forty-two (42) east, to the southeast corner of township twenty-five (25) north, range forty-one (41) east; thence east along the north line of township twenty-four (24) north, range forty-two (42) east, to the northeast corner thereof; thence south along the range line between ranges forty-two (42) and forty-three (43) east and said range line extended to the point of intersection of said range line extended, with the north line of township twenty (20) north, the same being the southeast corner of unsurveyed township twenty-one (21) north, range forty-two (42) east; thence west along the north line, extended, of township twenty (20) north, to the point of intersection of said extended north line with the range line between ranges forty-two (42) and forty-three (43) east, extended, the same being the northeast corner of unsurveyed township twenty (20) north, range forty-two (42) east; thence due south along the range line between ranges forty-two (42) and forty-three (43) east, to the southeast

corner of township nineteen (19) north, range forty-two (42) east; thence due east along the north line of township eighteen (18) north, range forty-three (43) east, to the northeast corner of township eighteen (18) north, range forty-three (43) east; thence due south along the range line between ranges forty-three (43) and forty-four (44) east, to the southeast corner of township seventeen (17) north, range forty-three (43) east; thence due east along the north line of township sixteen (16) north, range forty-four (44) east, to the northeast corner of township sixteen (16), north, range forty-four (44) east; thence due south along the range line between ranges forty-four (44) and forty-five (45) east, to the northeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; the same being one (1) mile north of the third standard parallel north; thence west following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-four (44) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-three (43) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-two (42) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-one (41) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty (40) east; thence north for a distance of one (1) mile to the northeast corner of section twenty-five (25), township thirteen (13) north, range thirty-nine (39) east, the same being two miles north of the third standard parallel; thence west on the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-nine (39) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-eight (38) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-seven (37) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-six (36) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-five (35) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-four (34) east; thence south to the northeast corner of section thirty-six (36), township thirteen (13) north, range thirty-three (33) east, the same being one (1) mile north of the third standard parallel; then west, following the north line of sections thirty-six (36),

thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-three (33) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-two (32) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-one (31) east, and the north line of sections thirty-six (36), thirty-five (35), and thirty-four (34), township thirteen (13) north, range thirty (30) east, or to a point in the center of the channel of the Musselshell river, where said section line intersects said river, the same being a point one (1) mile north of the third standard parallel; thence following the center of the channel of the Musselshell river in a northerly direction to its confluence with the Missouri river; thence running in a northeasterly direction following the center of the channel of the Missouri river to the place of beginning. The county seat is Jordan, Montana.

History: County created by Ch. 4, L. 1919, effective April 1, 1919, from Dawson county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4321, R. C. M. 1921.

4322. GLACIER COUNTY. Beginning at the point where the international boundary between the United States and Canada intersects the range line between ranges four (4) and five (5) west; thence west, following said international boundary to its intersection with the summit of the main range of the Rocky mountains; thence meandering in a southeasterly direction and following the summit of the main range of the Rocky mountains to a point which intersects the township line common to townships twenty-nine (29) and thirty (30) north; thence in an easterly direction on the township line common to townships twenty-nine (29) and thirty (30) north, to the southeast corner of section thirty-six (36), township thirty (30) north, range eight (8) west; thence in a northerly direction on the township line between ranges seven (7) and eight (8) west, to the northeast corner of section one (1), township thirty-one (31) north, range eight (8) west; thence in an easterly direction on the township line between townships thirty-one (31) and thirty-two (32), to a point where said township line intersects with the Marias river; thence, following on down the center of the channel of the Marias river to its intersection with the line between ranges four (4) and five (5) west, thence north following the line between ranges four (4) and five (5) west, to the point of beginning. The county seat is Cut Bank, Montana.

History: County created by Ch. 21, L. 1919, effective April 1, 1919, from portions of Teton county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4322, R. C. M. 1921.

4323. GOLDEN VALLEY COUNTY. Beginning at the northeast corner of section one (1), in township eleven (11) north, of range twenty-one (21) east, thence south nine (9) miles to the southeast corner of section thirteen (13), in township ten (10) north, range twenty-one (21) east; thence east one (1) mile to the northeast corner of section nineteen (19), in township ten (10) north, range twenty-two (22) east; thence south three (3) miles to the southeast corner of section thirty-one (31), in township ten (10) north, range twenty-two (22) east; thence east four

(4) miles to the northeast corner of section two (2), township nine (9) north, range twenty-two (22) east; thence south six (6) miles to the southeast corner of section thirty-five (35), in township nine (9) north, range twenty-two (22) east; thence east along the township line about one (1) mile and twelve (12) chains to the northeast corner of section six (6), township eight (8) north, range twenty-three (23) east; thence south to the southeast corner of section seven (7), in township eight (8) north, of range twenty-three (23) east; thence east one (1) mile to the northeast corner of section seventeen (17), township eight (8) north, range twenty-three (23) east; thence south six (6) miles to the southeast corner of section eight (8), in township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section sixteen (16), in township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section sixteen (16), in township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the north quarter ($\frac{1}{4}$) corner of section twenty-two (22), township seven (7) north, range twenty-three (23) east; thence south two (2) miles to the south quarter ($\frac{1}{4}$) corner of section twenty-seven (27), township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the northeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section two (2), in township six (6) north, range twenty-three (23) east; thence south two (2) miles to the southeast corner of section eleven (11), in township six (6) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section thirteen (13), township six (6) north, range twenty-three (23) east; thence south ten (10) miles to the southeast corner of section thirty-six (36), township five (5) north, range twenty-three (23) east; thence west along the first standard parallel north thirty (30) miles to the southwest corner of section thirty-one (31), township five (5) north, range nineteen (19) east; thence west to the northeast corner of section one (1) township four (4) north, range eighteen (18) east; thence south six (6) miles along the range line between ranges eighteen (18) and nineteen (19) east, to the southeast corner of section thirty-six (36), township four (4) north, of range eighteen (18) east; thence west nine (9) miles to the southwest corner of section thirty-four (34), township four (4) north, range seventeen (17) east; thence north six (6) miles to the southwest corner of section thirty-four (34), township five (5) north, range seventeen (17) east; thence west three (3) miles to the southwest corner of section thirty-one (31), township five (5) north, range seventeen (17) east; thence north six (6) miles to the northwest corner of section six (6), township five (5) north, range seventeen (17) east; thence east twelve (12) miles to the northwest corner of section six (6), township five (5) north, range nineteen (19) east; thence north along the range line between ranges eighteen (18) and nineteen (19), thirty-six (36) miles to the northwest corner of township eleven (11) north, range nineteen (19) east; thence east along the township line between townships eleven (11) and twelve (12) north, eighteen (18) miles to the

northeast corner of section one (1), township eleven (11) north, range twenty-one (21) east, being the place of beginning. The county seat is Ryegate, Montana.

History: County created by petition and election effective October 4, 1920, from portions of Musselshell and Sweetgrass; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4323, R. C. M. 1921.

4324. GRANITE COUNTY. Beginning at the northeast corner of township five (5) north, range fourteen (14) west; thence running east to the southeast corner of township six (6) north, range twelve (12) west; thence running north following the lines between ranges eleven (11) and twelve (12) west, to an intersection with the divide between Big Blackfoot and Hell Gate rivers; thence westerly along the summit of said divide to an intersection with a line drawn due north from the summit of Medicine Tree hill, which is in township eleven (11) north, range fifteen (15) west; thence running due south to an intersection with the center of the old original channel of the Hell Gate river as the same existed at the creation of Granite county; thence running in a westerly direction following the center of the old original channel of the Hell Gate river to the mouth of Rock creek; thence running south following the center of the channel of Rock creek to the line between townships ten (10) and eleven (11) north; thence running west along said line to an intersection with the summit of the divide between the Bitter Root river and Rock creek; thence running in a southerly direction following the summit of said divide to its intersection with the Continental divide; thence following the Continental divide in a general northeasterly direction to its intersection with the line between ranges thirteen (13) and fourteen (14) west; thence north following the said line to the place of beginning. The county seat is Philipsburg, Montana.

History: County created March 2, 1893, L. 1893, p. 212; Sec. 4131, Pol. C. 1895; Sec. 2829, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4324, R. C. M. 1921.

4325. HILL COUNTY. Commencing at the section corner between sections three (3) and four (4), township thirty-seven (37) north, range seventeen (17) east, which is on the international boundary line between the United States and Canada; thence south about six (6) miles to the southeast corner of section thirty-three (33), township thirty-seven (37) north, range seventeen (17) east; thence west along the ninth standard parallel north to the closing corner common to sections three (3) and four (4), township thirty-six (36) north, range seventeen (17) east; thence south about twenty-four (24) miles on a line dividing the east and west half of townships thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) north, range seventeen (17) east, to the southeast corner of section thirty-three (33), township thirty-three (33) north, range seventeen (17) east; thence east on the eighth standard parallel north to the closing corner common to sections two (2) and three (3), township thirty-two (32) north, range seventeen (17) east; thence south about three (3) miles, following the section line to the southwest corner of section fourteen (14), township thirty-two (32) north, range seventeen (17) east; thence east about one and one-half (1½) miles to the quarter corner be-

tween sections thirteen (13) and twenty-four (24), township thirty-two (32) north, range seventeen (17) east; thence south on the quarter section line, about five (5) miles to the quarter corner between sections twelve (12) and thirteen (13), township thirty-one (31) north, range seventeen (17) east; thence west about one and one-half ($1\frac{1}{2}$) miles to the northwest corner of section fourteen (14), township thirty-one (31) north, range seventeen (17) east; thence south about four (4) miles to the southeast corner of section thirty-four (34), township thirty-one (31) north, range seventeen (17) east; thence west about one (1) mile to the southwest corner of said section thirty-four (34); thence south about seven (7) miles to the southwest corner of section three (3), township twenty-nine (29) north, range seventeen (17) east; thence west about one and one-half ($1\frac{1}{2}$) miles to the quarter corner on the north boundary of section eight (8), township twenty-nine (29) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner on the south boundary of section thirty-two (32), township twenty-nine (29) north, range seventeen (17) east; thence east about one (1) mile to the northwest corner of section three (3), township twenty-eight (28) north, range seventeen (17) east; thence south on the section line to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seventeen (17) east; thence running west along the township line between townships twenty-seven (27) and twenty-eight (28), for about nine (9) miles to the point where said township line intersects the range line between ranges fifteen (15) and sixteen (16) east; thence running north along said range line between ranges fifteen (15) and sixteen (16), when surveyed, about six (6) miles to the point where the said range line, when surveyed, will intersect the township line between townships twenty-eight (28) and twenty-nine (29) north, when surveyed; thence running west about six (6) miles along said township line between townships twenty-eight (28) and twenty-nine (29), when surveyed, to the point where the said township line intersects the range line between ranges fourteen and fifteen east; thence running north about six (6) miles along said line between ranges fourteen (14) and fifteen (15), to the point where the said range line intersects the line between townships twenty-nine (29) and thirty (30) north; thence running west about thirty-six (36) miles along the said line between said townships to the intersection of said township line with the line running between ranges eight (8) and nine (9) east; thence running south about six (6) miles along said line between ranges eight (8) and nine (9) to the point where the said line intersects the line running between townships twenty-eight (28) and twenty-nine (29) north; thence running west about six (6) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range eight (8) east; thence running north about fifty-four (54) miles along the line between ranges seven (7) and eight (8) east, observing the offsets, jogs and corrections to the point where said line between ranges seven (7) and eight (8) east, intersects the Canadian boundary line; thence running east about fifty-seven (57) miles along the Canadian boundary line to the point of beginning. The county seat is Havre, Montana.

History: County created by petition and election, effective Feb. 28, 1912, from portion of Chouteau county; Toole county detached, May 7, 1914; Liberty county de-

tached, Feb. 11, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4325, R. C. M. 1921.

4326. JEFFERSON COUNTY. Beginning at the southwest corner of township four (4) north, range one (1) west; thence running east along the south line of said township to the Montana principal meridian; thence running south along said meridian to the center of the channel of the Jefferson river; thence in a westerly direction, following the center of the channel of said river to Parson's bridge on said river; thence westerly along Parson's toll-road, leading from Parson's bridge to the city of Butte, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll-gate; thence up the north fork of Little Pipestone creek to its source; thence in a direct line to the nearest point of the continental divide; thence northerly along said Continental divide to the head of Ten-Mile creek, township eight (8) north, range six (6) west; thence in a northeasterly direction following the divide between Ten-Mile creek and the North Boulder to the divide between Lump gulch and Ten-Mile creek; thence along said divide between the waters of Grizzly gulch and Lump gulch to the divide between the waters that come into Dry gulch above Helena and the waters of Prickly Pear creek to the north peak of the mountains southeasterly from Helena, known as Dry Gulch mountains; thence due east to an intersection with the line between ranges one (1) and two (2) west; thence running south on said line to the place of beginning. The county seat is Boulder, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 530 (see Ch. XIX of Second Ter. Ses.); boundaries established Dec. 2, 1867, L. 1867, p. 104; Sec. 5, Cod. Stat. 1871, p. 430; Sec. 327, 5th Div. Rev. Stat. 1879; boundaries changed March 7, 1883, L. 1883, p. 97; Sec. 734, 5th Div.

Comp. Stat. 1887; boundaries changed March 5, 1891, L. 1891, pp. 224, 225; Secs. 4108-4111, Pol. C. 1895; Broadwater county created, including part of, Feb. 9, 1897, L. 1897, pp. 45-49; Secs. 2793, 2835, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4326, R. C. M. 1921.

4327. JUDITH BASIN COUNTY. Beginning at the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), in township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east; thence west to the northwest corner of township eighteen (18) north, range eleven (11) east; thence north to the southeast corner of section twelve (12), in township nineteen (19) north, range ten (10) east; thence running west along the south line of sections twelve (12), eleven (11), ten (10), nine (9), eight (8), and seven (7), township nineteen (19) north, ranges ten (10) and nine (9) east, to the southwest corner of section seven (7), township

nineteen (19) north, range nine (9) east; thence south to the southeast corner of township nineteen (19) north, range eight (8) east; thence west to the southwest corner of said township nineteen (19) north, range eight (8) east; thence south along the range line between ranges seven (7) and eight (8) east, a distance of four and one-fourth ($4\frac{1}{4}$) miles, more or less, to the southeast corner of the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence west one-fourth ($\frac{1}{4}$) mile to the southwest corner of said northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-five (25); thence north a distance of three-fourths ($\frac{3}{4}$) of a mile, to the northeast corner of the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence west a distance of three-fourths ($\frac{3}{4}$) of a mile to the quarter ($\frac{1}{4}$) corner on the west boundary of said section twenty-four (24); thence south a distance of four (4) miles, more or less, to the quarter ($\frac{1}{4}$) corner on the west boundary of section twelve (12), township seventeen (17) north, range seven (7) east; thence east a distance of one-half ($\frac{1}{2}$) mile to the center of said section twelve (12); thence south one (1) mile to the center of section thirteen (13), township seventeen (17) north, range seven (7) east; thence east one-half ($\frac{1}{2}$) mile to the quarter ($\frac{1}{4}$) corner on the east boundary of said section thirteen (13), township seventeen (17) north, range seven (7) east; thence south along the boundary line between ranges seven (7) and eight (8) east, as corrected by the United States government survey thereof, to the southwest corner of township sixteen (16) north, of range eight (8) east; thence east to the southeast corner of said township sixteen (16) north, range eight (8) east; thence south along the boundary line between ranges eight (8) and nine (9) east, as corrected by the United States government survey thereof, the summit of the main range of the Little Belt mountains; thence in a southeasterly direction along the summit of the main range of said Little Belt mountains to the boundary line between ranges ten (10) and eleven (11) east; thence easterly along the divide between the waters of Musselshell river and Judith river to the most easterly point of the Little Belt mountains at Judith Gap; thence east to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7), and six (6), in said township eleven (11) north, range sixteen (16) east; to the northeast corner of the southeast quarter of section six (6), in said township eleven (11) north, range sixteen (16) east; thence west to the northwest corner of said southeast quarter of said section six (6) in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence north to the

northeast corner of said southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter of section nine (9), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter of section four (4), in township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter of section two (2) in township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north, to the southeast corner of section thirty-four (34), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), in township thirteen (13)-north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the place of beginning.

History: County created by petition and election, effective December 10, 1920, from portions of Fergus and Cascade; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4327, R. C. M. 1921; amd. Sec. 2, Ch. 93, L. 1925.

NOTE.—Amendment of this section by Ch. 93, L. 1925, held unconstitutional in

State ex rel. Foot v. Burr et al., 73 M 586, 238 P 585. Section here given as it existed in the 1921 code, before amendment.

The city of Stanford, Montana, was selected as county seat of Judith Basin county, in accordance with the provisions for selecting county seats.

4327.1. LAKE COUNTY. Commencing at the northwest corner of township 25 north, range 22 west, M. M., thence east on said township line to the east shore of Flathead lake; thence in a general northerly direction along said lake shore to the meander corner on the south line of section 12, township 26 north, range 20 west, Montana meridian; thence east along the south line of said section 12, township 26 north, range 20 west, and continuing east along the south line of section 7, township 26 north, range 19 west, to the southeast corner of said section; thence north along the east side of said section 7 to the northeast corner of said section; thence east along the south line of section 5, township 26 north, range 19 west, to the southeast corner of said section 5; thence north along the east side of said section 5 to the north line of township 26 north, range 19 west, M. M.; thence east along the north line of township 26 north, range 19 west, and said township line extended to the summit of the Swan range of the rocky mountains; thence in a general southeasterly

direction along the Swan divide between the Swan river and the south fork of the Flathead river, approximately three miles, to Red Owl mountain; thence continuing southeasterly and southerly along the summit of said divide, approximately 20 miles to Swan peak; thence southerly along said divide to a point where a line so drawn intersects the north boundary of Missoula county; thence west along the north boundary of Missoula county to the summit of the Mission range; thence in a southerly and southeasterly direction along the summit of the Mission range to a point where the summit of the Mission range intersects the west line of township 17 north, range 17 west, thence south along said township line to the southeast corner of township 17 north, range 18 west; thence west along the south line of said township to the northwest corner of township 16 north, range 18 west; thence south about three miles to the southeast corner of section 13, township 16 north, range 19 west; thence westerly along the mid-township line of township 16 north, range 19 west and continuing westerly along the mid-township line of township 16 north, range 20 west, to the point where said line intersects the boundary division line of Sanders and Missoula counties; thence in a northerly direction to the northwest corner of township 16 north, range 20 west; thence west to the southeast corner of township 17 north, range 21 west; thence north along township line to the northeast corner of township 18 north, range 21 west; thence due west along the north line of said township to the center of the main channel of the Flathead river; thence following the center line of the main channel of the Flathead river in a northerly direction to a point where it intersects the south line of the north tier of sections of township 21 north, thence due west along section line to the southeast corner of section 6, township 21 north, range 23 west; thence due north along section line to the southeast corner of section 18, township 23 north, range 23 west; thence west about one mile to the southwest corner of said section; thence north along township line to the north line of township 23 north, range 23 west; thence east along the north line of township 23 north, of range 23 west, to the northeast corner of said township; thence north along range line to the northeast corner of township 24, range 23 west; thence west along north line of township 24 north, to the southwest corner of township 25, range 22 west; thence north to the place of beginning. The city of Polson, Montana, shall be the county seat of the said county of Lake.

History: En. by resolution, effective Aug. 10, 1923, p. 623, L. 1923.

4328. LEWIS AND CLARK COUNTY. Beginning at a point where the Sun river crosses the Helena guide meridian; thence up Sun river on the most northerly branch thereof that heads in the Rocky mountains to the crest of the said Rocky mountains; thence southerly along the crest of the said Rocky mountains to the point where said crest is intersected by the west boundary line of range eleven (11) west; thence south along the west boundary line of townships twenty (20), nineteen (19), eighteen (18), and seventeen (17) north, range eleven (11) west, to the southwest corner of township seventeen (17) north, range eleven (11) west; thence east along the south boundary of township seventeen (17) north, range eleven (11) west, to the northwest corner of township sixteen (16)

north, range nine (9) west; thence south along the west boundary line of townships sixteen (16), fifteen (15), fourteen (14), and thirteen (13) north, range nine (9) west, to the southwest corner of township thirteen (13) north, range nine (9) west; thence east along the south boundary line of township thirteen (13) north, ranges nine (9) and eight (8) west, to the northwest corner of township twelve (12) north, range seven (7) west; thence south along the west boundary line of townships twelve (12) and eleven (11) north, range seven (7) west, to the southwest corner of section eighteen (18), township eleven (11) north, range seven (7) west; thence east along the south boundary lines of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14), and thirteen (13), township eleven (11) north, range seven (7) west, to the southwest corner of section eighteen (18), township eleven (11) north, range six (6) west; thence south along the west boundary line of said township eleven (11) north, range six (6) west to the southwest corner thereof; thence east along the south boundary line of said township eleven (11) north, range six (6) west to the summit of the main range of the Rocky mountains; thence southeasterly along the said crest of the Rocky mountains to the head of Ten Mile creek; thence along the divide between Ten Mile creek and the waters of the North Boulder to the divide between the waters of Lump gulch and Ten Mile creek; thence along said divide between the waters of Grizzly gulch and Lump gulch to the divide between the waters that come into Dry gulch above Helena and the waters of Prickly Pear creek to the north peak of the mountains south easterly from Helena, known as Dry Gulch mountain; thence due east to the center of the channel of the Missouri river; thence along the middle of the main channel of the Missouri river to an intersection with the west boundary line of section thirty-two (32), township ten (10) north, range one (1) east; thence north along said line to its intersection with Cave gulch; thence up the said Cave gulch to the summit of the Big Belt mountains; thence along the summit of the said mountains to the southwest corner of township fourteen (14) north, range one (1) east; thence west along the south line of said township fourteen (14) north, to the southwest corner of township fourteen (14) north, range one (1) west; thence north along the west line of range one (1) west, to a point on said range line directly opposite the confluence of the Dearborn river with the Missouri river; thence due west to the mouth of the said Dearborn river; thence up the middle of the main channel of the Dearborn river to its intersection with the Helena guide meridian; thence along the said Helena guide meridian to its intersection with Sun river, the place of beginning. The county seat is Helena, Montana.

History: Edgerton county created Feb. 2, 1865, Sec. 6, Bannack Stat., p. 530; boundaries established Nov. 21, 1867, L. 1867, p. 101; Lewis & Clark county, Sec. 6, Cod. Stat. 1871, p. 430; 5th Div. Rev. Stat. 1879, Sec. 328; 5th Div. Comp. Stat. 1887, Sec. 735; Cascade county created out of part of, Oct. 12, 1887, L. 1887, pp. 104-109; Sec. 4112, Pol. C. 1895; boundaries extend-

ed March 6, 1897, L. 1897, pp. 53-55; portion of Deer Lodge added to, Feb. 23, 1899, L. 1899, pp. 44-47; portion of added to Powell, Ch. 106, L. 1903; spelling of name changed to Lewis and Clark; Ch. 13, L. 1905; Secs. 2794, 2795, 2797, 2799, 2837-2838, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4328, R. C. M. 1921.

4329. LIBERTY COUNTY. Beginning at a point on the international boundary line between the United States and the Dominion of Canada,

where the range line between ranges three (3) and four (4) east, intersects said international boundary line; thence running south along the range line between said ranges three (3) and four (4) east, observing the offsets, jogs, and corrections, a distance of about fifty-four (54) miles, to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range four (4) east, being the point where the range line between said ranges three (3) east and four (4) east intersects the township line between townships twenty-eight (28) and twenty-nine (29) north, and from said point running due west along the township line between townships twenty-eight (28) and twenty-nine (29) north, a distance of six (6) miles, to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range three (3) east; running thence south along the range line between ranges two (2) and three (3) east, a distance of six (6) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range three (3) east; thence running due east along the range line between townships twenty-seven (27) north, and twenty-eight (28) north, a distance of about twenty-seven (27) miles to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seven (7) east; running thence north along the section line between the west half and the east half of township twenty-eight (28) north, range seven (7) east, a distance of six (6) miles to the northwest corner of section three (3), township twenty-eight (28) north, range seven (7) east; thence running due east along the township line between townships twenty-eight (28) and twenty-nine (29) north, a distance of three (3) miles to the southeast corner of section thirty-six (36), township twenty-nine (29) north, range seven (7) east, being the point where the township line between townships twenty-eight (28) and twenty-nine (29) north intersects the range line between ranges seven (7) and eight (8) east, and from said point running due north along said line between ranges seven (7) and eight (8) east, observing the offsets, jogs, and corrections, a distance of about fifty-four (54) miles to the point where said range line intersects the international boundary between the United States and the Dominion of Canada; thence running west along said international boundary line, a distance of twenty-four (24) miles to the point of beginning, and which said county shall include townships twenty-nine (29) to thirty-seven (37) north, inclusive of ranges four (4), five (5), six (6), and seven (7) east, inclusive, and townships twenty-eight (28) north, ranges three (3), four (4), five (5), and six (6) east, inclusive, and the west half of township twenty-eight (28) north, range seven (7) east. The county seat is Chester, Montana.

History: County created by petition and election, effective Feb. 11, 1920, from portions of Hill and Chouteau counties; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4329, R. C. M. 1921.

4330. LINCOLN COUNTY. Beginning at the southeast corner of section twelve (12), township twenty-six (26) north, range twenty-seven (27) west; and running thence west about seven (7) miles on section lines to an intersection with the summit of the watershed dividing the waters flowing into the Kootenai and Clarks Fork of the Columbia river, and commonly designated the Cabinet range of mountains; thence first south-

erly and thence in a westerly and northerly direction along the crest or summit of said watershed to the point of intersection with the state boundary line between Montana and Idaho; thence north along said state boundary line to the northwest corner of Montana; thence east along the international boundary line to the point of intersection with the summit of the watershed dividing the Kootenai and Stillwater drainage on the west and the Flathead and Whitefish drainage on the east; thence in a southeasterly direction along the summit of said watershed to the point of intersection of said watershed with the north township line of township thirty-three (33) north, extended; thence west along said township line about twelve (12) miles to the northeast corner of township thirty-three (33) north, range twenty-six (26) west; thence south along the Horse Plains guide meridian to the southeast corner of township thirty-three (33) north, range twenty-six (26) west; thence east to the northeast corner of township thirty-two (32) north, range twenty-six (26) west; thence south along the Horse Plains guide meridian to the southeast corner of township twenty-nine (29) north, range twenty-six (26) west; thence west to the northwest corner of section three (3), township twenty-eight (28) north, range twenty-seven (27) west; thence south to the southwest corner of section thirty-four (34), township twenty-eight (28) north, range twenty-seven (27) west; thence east to the northwest corner of section six (6), township twenty-seven (27) north, range twenty-six (26) west; thence south to the place of beginning. The county seat is Libby, Montana.

History: County created from portion of Flathead county by Ch. 133, L. 1909, effective July 1, 1909; boundaries changed by Ch. 46, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4330, R. C. M. 1921.

4331. MADISON COUNTY. Beginning at the southeast corner of section sixteen (16), township five (5), south, range seven (7), west; thence south to the southwest corner of section thirty-four (34), township five (5) south, range seven (7) west, said corner being a monument on the first standard parallel south; thence east on said parallel to the northwest corner of section three (3), township six (6) south, range seven (7) west; thence south eighteen (18) miles to a point which, when surveyed, will be the northwest corner of section three (3), township nine (9) south, range seven (7) west; thence east six (6) miles, more or less, to the northeast corner of section four (4), township nine (9) south, range six (6) west; thence south six (6) miles, more or less, to the northeast corner of section four (4), township ten (10) south, range six (6) west; thence east seven (7) miles, more or less, to the northeast corner section three (3), township ten (10) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner section thirty-four (34), township ten (10) south, range five (5) west; thence east to the northwest corner of section one (1), township eleven (11) south, range five (5) west; thence south six (6) miles, more or less, to a point which, when surveyed, will be the southeast corner section thirty-five (35), township eleven (11), south, range five (5) west; thence east five (5) miles to a point which, when surveyed, will be the northeast corner section three (3), township twelve (12) south, range four (4) west; thence south three (3) miles, to a point which, when surveyed, will be the northeast corner of section twenty-two (22), township twelve (12) south, range four (4) west; thence east four-

teen (14) miles, more or less, to a point which, when surveyed, will be the northeast corner of section twenty-four (24), township twelve (12), south, range two (2) west; thence south five (5) miles, more or less, to the northeast corner section thirteen (13), township thirteen (13) south, range two (2) west; thence east sixteen (16) miles, more or less, following the section lines to the point of intersection with the boundary line between Montana and Idaho at the top of the divide of the main range of the Rocky mountains; thence in a general northeasterly course five (5) miles, more or less, following along the top of said divide of the main range of the Bitter Root mountains to an intersection of the summit of said divide with what will be, when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be, when surveyed, the west line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9), and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be, when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section thirty-four (34), township five (5) south, range three (3) east; thence north along what will be when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10), and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2) south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section thirteen (13); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section three (3); thence north to the northwest corner of section three (3); all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19); all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five

(5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36), township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of the Jefferson river; thence following the center of the channel of the Jefferson river in a general westerly direction to the site of Parson's bridge on said Jefferson river; thence in a westerly direction on a straight line to the top of Table mountain; thence in a straight line to the right-hand fork of Camp creek; thence in a southwesterly direction down said Camp creek, following the center of the channel to a point in the center of the channel of the Big Hole river opposite the center of the mouth of Camp creek; thence in a southerly direction following the center of the channel of said Big Hole river to its intersection with the west line of section thirty-two (32), township four (4) south, range seven (7) west; thence southeasterly in a straight line to the southeast corner of section sixteen (16), township five (5) south, range seven (7) west, and place of beginning. The county seat is Virginia City, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529 (see Ch. XXII of Second Ter. Ses.); boundaries established Dec. 10, 1867, L. 1867, p. 102; N. and N.W. boundary established Jan. 12, 1869, L. 1869, p. 105; Sec. 4, Cod. Stat. 1871, p. 430; territory added Feb. 7, 1874, L. 1874,

p. 68; Sec. 636, 5th Div. Rev. Stat. 1879; Sec. 733, 5th Div. Comp. Stat. 1887; Sec. 4110, Pol. C. 1895; Sec. 2792, Rev. C. 1907; boundaries changed by Ch. 73, L. 1911 and by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4331, R. C. M. 1921.

4332. McCONE COUNTY. Beginning at the point of intersection of the range line between ranges fifty (50) and fifty-one (50) east, at the center of the main channel of the Missouri river; running thence south along the range line between ranges fifty (50) and fifty-one (51) east, to the north line of township twenty-four (24) north, range fifty-one (51) east; thence west along the north line of township twenty-four (24) north, to the northeast corner of township twenty-four (24) north, range fifty (50) east; thence south along the range line between ranges fifty (50) and fifty-one (51) east, to the southeast corner of township twenty-four (24) north, range fifty (50) east; thence west along the north line of township twenty-three (23) north, to the northwest corner of township twenty-three (23) north, range fifty (50) east; thence south along the range line between ranges forty-nine (49) and fifty (50) east, to the southeast corner of township twenty-one (21) north, range forty-nine (49) east; thence west along the north line of township twenty (20) north, to the northwest corner of township twenty (20) north, range fifty (50) east; thence south along the range lines between ranges forty-nine (49) and fifty (50) east, to the north line of township sixteen (16) north, being the southeast corner of township seventeen (17) north, range forty-nine (49) east; thence west along the north line of township sixteen (16) north, to the northwest corner of township sixteen (16) north, range forty-seven (47) east; thence south along the range line between ranges forty-six (46) and forty-seven (47), to the southeast corner of township sixteen (16) north, range forty-six (46) east; thence west along the north line of township fifteen (15), to the southeast corner of township

sixteen (16) north, range forty-five (45) east; thence north along the range line between ranges forty-five (45) and forty-six (46) east, to the northeast corner of township sixteen (16) north, range forty-five (45) east; thence west along the north line of township sixteen (16) north, to the southwest corner of township seventeen (17) north, range forty-four (44) east; thence north along the range line between ranges forty-three (43) and forty-four (44) east, to the northeast corner of township eighteen (18) north, range forty-three (43) east; thence west along the north line of township eighteen (18) north, to the southwest corner of township nineteen (19) north, range forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43), to the point of intersection of said range line with the north line of township twenty (20) north; thence east along the north line of township twenty (20) north, to the point of intersection with the range line between ranges forty-two (42) and forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43) east, to the northeast corner of township twenty-four (24) north, range forty-two (42) east; thence west along the north line of township twenty-four (24) to the southwest corner of township twenty-five (25) north, range forty-two (42) east; thence north along the range line between ranges forty-one (41) and forty-two (42) east, to the southwest corner of township twenty-six (26) north, range forty-two (42) east; thence west along the north line of township twenty-five (25) north, to the point of intersection with the center of the present main channel of the Missouri river; thence in a northerly and easterly direction along the center of the main channel of the Missouri river to the place of beginning. The county seat is Circle, Montana.

History: County created by Ch. 33, L. 1919, effective April 1, 1919, from portions of Dawson and Richland. Boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4332, R. C. M. 1921.

4333. MEAGHER COUNTY. Beginning at the northwest corner of section six (6), township thirteen (13) north, range two (2) east; thence west six (6) miles, more or less, to the top of the main divide of the Big Belt mountains; thence on a line following a general southeasterly direction on the crest of the range to the point where said main divide intersects an east and west line dividing the north from the south half of sections thirteen (13), fourteen (14), fifteen (15), township five (5) north, range five (5) east; thence east on said line to the quarter corner of the east line of said section thirteen (13); thence continuing east on the half section line that divides the north from the south half of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14), and thirteen (13), in township five (5) north, ranges six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11) east, to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence north on the line between ranges eleven (11) and twelve (12) east, to the second standard parallel north; thence east along said standard parallel to the southeast corner of township nine (9) north, range eleven (11) east; thence north along the line between ranges eleven (11) and twelve (12) east, to the crest of the Little Belt mountains; thence along the crest of the Little Belt mountains in a gen-

eral northwesterly direction to an intersection with the south line of township sixteen (16) north, range five (5) east; thence west to the southwest corner of township sixteen (16) north, range five (5) east; thence south to the southeast corner of township fifteen (15) north, range four (4) east; thence west to the northwest corner of section six (6), township fourteen (14) north, range two (2) east; thence south to the northwest corner of section six (6), township thirteen (13) north, range two (2) east, and place of beginning. The county seat is White Sulphur Springs, Montana.

History: County created Nov. 16, 1867, L. 1867, p. 99; Sec. 7, Cod. Stat. 1871, p. 431; boundaries changed Feb. 13, 1874, L. 1874, p. 66; boundaries changed Feb. 9, 1876, L. 1876, p. 48; Sec. 329, 5th Div. Rev. Stat. 1879; boundaries changed Feb. 7, 1883, L. 1883, p. 33; Fergus county created out of, March 12, 1885, L. 1885, pp. 78-83; Sec. 736, 5th Div. Comp. Stat. 1887; Cascade county created out of part of, Sept. 12, 1887, Ex. L. 1887, pp. 104-109; Secs. 4113, 4135, Pol. C. 1895; Sweet Grass county created, including part of, March 5, 1895, L. 1895, pp. 54-58, and portion of added to Yellowstone by Sec. 8, *supra*;

Broadwater county created, including part of, Feb. 9, 1897, L. 1897, pp. 45-49; portion added to Cascade county, March 1, 1897, L. 1897, pp. 50-52; portion added to Lewis and Clark, March 6, 1897, L. 1897, pp. 53-55; T. 15 N., R. 4 E., added to Cascade county, March 6, 1899, L. 1899, p. 43; Secs. 2800, 2796, 2816, 2833, 2835, Rev. C. 1907; boundaries established, Sec. 16, Ch. 25, L. 1911; boundaries changed, Ch. 60, L. 1913; Wheatland county created, including part of, Ch. 55, L. 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4333, R. C. M. 1921.

4334. MINERAL COUNTY. Beginning at the intersection of the divide between the St. Regis and Clarks Fork of the Columbia river with the Idaho-Montana line; thence running in an easterly and southeasterly direction, following said divide to its intersection with the west line of township nineteen (19) north, range twenty-six (26) west, running thence south on the line between ranges twenty-six (26) and twenty-seven (27) west, to the southwest corner of section eighteen (18), township eighteen (18) north, range twenty-six (26) west; running thence east along the section line to the northeast corner of section twenty-one (21), township eighteen (18) north, range twenty-six (26) west; running thence south one (1) mile to the southeast corner of said section twenty-one (21); thence east three (3) miles, following the section line to the northeast corner of section twenty-five (25), township eighteen (18) north, range twenty-six (26) west; thence running south to the southeast corner of section thirty-six (36), said township and range; thence running east to the northeast corner of section five (5), township seventeen (17) north, range twenty-five (25) west; thence running south to the southwest corner of section nine (9), township seventeen (17) north, range twenty-five (25) west; thence running east to the southeast corner of said section nine (9); thence running south to the southwest corner of section fifteen (15), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section twenty-four (24) township seventeen (17) north, range twenty-five (25) west; thence running south to the southeast corner of section thirty-six (36), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section one (1), township sixteen (16) north, range twenty-five (25) west; thence running south to the southeast corner of said section one (1); thence running east to the northeast corner of section eight (8), township sixteen (16) north, range twenty-four (24) west;

thence running south to the southeast corner of section seventeen (17), township sixteen (16) north, range twenty-four (24) west; thence running east to the northeast corner of section twenty-one (21), township sixteen (16) north, range twenty-four (24) west, thence running south to the southeast corner of said section twenty-one (21); thence running east to the northeast corner of section twenty-six (26), township sixteen (16) north, range twenty-four (24) west; thence running south to the southwest corner of section thirty-six (36), township sixteen (16) north, range twenty-four (24) west; thence running east to the southeast corner of said section thirty-six (36); thence running south to the southwest corner of section seven (7), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section fifteen (15), township fifteen (15) north, range twenty-three (23) west; thence running south to the southwest corner of section twenty-six (26), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section thirty-one (31), township fifteen (15) north, range twenty-two (22) west; thence running south to the southeast corner of said section thirty-one (31); thence running west to the quarter corner on the north line of section one (1), township fourteen (14) north, range twenty-three (23) west; thence running south to an intersection with the center of the channel of the Missoula river; thence running in a northwesterly direction, following the center of the channel of the Missoula river, to its intersection with the line dividing townships fourteen (14) and fifteen (15) north; thence running west to the northeast corner of section five (5), township fourteen (14) north, range twenty-three (23) west; thence running south to the southeast corner of said section five (5); thence running west to the southwest corner of said section five (5); thence running south to the southeast corner of section eighteen (18), township fourteen (14) north, range twenty-three (23) west; thence running west to the southwest corner of said section eighteen (18); said point being on the Lo Lo guide meridian; thence running south along the Lo Lo guide meridian to the third standard parallel north; thence running east to the northeast corner of section one (1), township twelve (12) north, range twenty-four (24) west; thence running south to the southeast corner of section thirty-six (36), township twelve (12) north, range twenty-four (24) west; thence running west to the northwest corner of section six (6), township eleven (11) north, range twenty-four (24) west; thence running south to the Montana-Idaho state line; thence running in a northwesterly direction, following the Montana-Idaho state line, to the place of beginning. The county seat is Superior, Montana.

History: County created by petition and election, effective Aug. 7, 1914, from portion of Missoula county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4334, R. C. M. 1921.

4335. MISSOULA COUNTY. Beginning at the intersection of the center of the channel of the Flathead river with the south line of the north tier of sections of township twenty-one (21) north; running thence southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township nineteen (19) north, range twenty-one (21) west, said point being approximately two (2) miles east of the southwest corner of said

township; thence east on the line between townships eighteen (18) and nineteen (19) north, to the point where said line intersects the line between ranges twenty (20) and twenty-one (21) west; thence south on said line between ranges twenty (20) and twenty-one (21) west, to the summit of the range of mountains commonly called the Coeur d'Alene, said mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene mountains, to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clarks Fork rivers; thence westerly along said summit dividing the waters of the Missoula and Clarks Fork rivers to the northeast corner of section five (5), township seventeen (17) north, range twenty-five (25) west; thence running south to the southwest corner of section nine (9), township seventeen (17) north, range twenty-five (25) west; thence running east to the southeast corner of said section nine (9); thence running south to the southwest corner of section fifteen (15), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section twenty-four (24); township seventeen (17) north, range twenty-five (25) west; thence running south to the southeast corner of section thirty-six (36), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section one (1), township sixteen (16) north, range twenty-five (25) west; thence running south to the southeast corner of said section one (1); thence running east to the northeast corner of section eight (8), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of section seventeen (17), township sixteen (16) north, range twenty-four (24) west; thence running east to the northeast corner of section twenty-one (21), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of said section twenty-one (21); thence running east to the northeast corner of section twenty-six (26), township sixteen (16) north, range twenty-four (24) west; thence running south to the southwest corner of section thirty-six (36), township sixteen (16) north, range twenty-four (24) west; thence running east to the southeast corner of said section thirty-six (36); thence running south to the southwest corner of section seven (7), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section fifteen (15), township fifteen (15) north, range twenty-three (23) west; thence running south to the southwest corner of section twenty-six (26), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section thirty-one (31), township fifteen (15) north, range twenty-two (22) west; thence running south to the southeast corner of said section thirty-one (31); thence running west to the quarter corner on the north line of section one (1), township fourteen (14) north, range twenty-three (23) west; thence running south to an intersection with the center of the channel of the Missoula river; thence running in a northwesterly direction, following the center of the channel of the Missoula river to its intersection with the line dividing townships fourteen (14) and fifteen (15) north; thence running west to the northeast corner of section five (5), township

fourteen (14) north, range twenty-three (23) west; thence running south to the southeast corner of said section five (5); thence running west to the southwest corner of said section five (5); thence running south to the southeast corner of section eighteen (18), township fourteen (14) north, range twenty-three (23) west; thence running west to the southwest corner of said section eighteen (18); said point being on the Lo Lo guide meridian; thence running south on the Lo Lo guide meridian to the third standard parallel north; thence running east to the northeast corner of section one (1), township twelve (12) north, range twenty-four (24) west; thence running south to the southeast corner of section thirty-six (36), township twelve (12) north, range twenty-four (24) west; thence running west to the northwest corner of section six (6), township eleven (11) north, range twenty-four (24) west; thence running south to the Montana-Idaho state line; thence running in a general southeasterly direction following said line to the intersection with the south line of township eleven (11) north, range twenty-two (22) west; thence running east along the line between townships ten (10) and eleven (11) north, to an intersection with the center of the channel of Rock creek; thence running in a northerly direction following down the center of the channel of Rock creek to the center of the channel of the Hell Gate river; thence running in an easterly direction up the center of the old original channel of said river as the same existed at the time of the creation of Missoula county, to an intersection with a line projected due north from the top of Medicine Tree hill, said natural monument being located in township eleven (11) north, range fifteen (15) west; thence running north along said line to the top of the divide between the Hell Gate and Blackfoot rivers; thence running in an easterly direction following the summit of said divide to its intersection with the east line of township twelve (12) north, range fourteen (14) west; thence running north along the line between ranges thirteen (13) and fourteen (14) west, observing the offsets and corrections thereto to the northeast corner of township sixteen (16) north, range fourteen (14) west; thence running west along the fourth standard parallel north to an intersection with a line heretofore described as being projected due north from the top of Medicine Tree hill; thence running north along said line to an intersection with the south line of the north tier of sections of township twenty-one (21) north, range fifteen (15) west; thence running west along the south line of the north tier of sections of township twenty-one (21) north to the place of beginning. The county seat is Missoula, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 528; boundaries established Nov. 20, 1867, L. 1867, p. 105; Sec. 1, Cod. Stat. 1871, p. 428; Sec. 323, 5th Div. Rev. Stat. 1879; Sec. 730, 5th Div. Comp. Stat. 1887; Flathead county created out of, Feb. 6, 1893, L. 1893, pp. 198-201; Teton county created from part of, Feb. 7, 1893, L. 1893, pp. 205-209; Granite county created from part of, March 2, 1893, L. 1893, pp. 212-217; Ravalli county created out of, Feb. 16, 1893, L. 1893, p. 212; Secs. 4107, 4124, 4128, 4130, 4132, Pol.

C. 1895; Sanders county created out of, Ch. 9, L. 1905; Secs. 2788, 2821, 2826, 2828, 2830, 2843, Rev. C. 1907; boundaries changed, Ch. 54, L. 1911; boundaries changed, Ch. 42, L. 1913; Mineral county detached, Aug. 7, 1914; part of Powell county added, Feb. 27, 1915, Ch. 46, L. 1915; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4335, R. C. M. 1921.

References

State v. Cates, 97 M 173, 189, 33 P 2d 578.

4336. MUSSELSHELL COUNTY. Beginning at the point where the center of the channel of the Musselshell river intersects the north line of township eleven (11) north, range thirty-one (31) east, and thence west to the northwest corner of township eleven (11) north, range twenty-two (22) east; thence south nine (9) miles to the southeast corner of section thirteen (13) in township ten (10) north, range twenty-one (21) east; thence east one (1) mile to the northeast corner of section nineteen (19), township ten (10) north, range twenty-two (22) east; thence south three (3) miles to the southeast corner of section thirty-one (31), township ten (10) north, range twenty-two (22) east; thence east four (4) miles to the northeast corner of section two (2), township nine (9) north, range twenty-two (22) east; thence south six (6) miles to the southeast corner of section thirty-five (35), township nine (9) north, range twenty-two (22) east; thence east along the township line about one (1) mile and twelve (12) chains to the northeast corner of section six (6), township eight (8) north, range twenty-three (23) east; thence south to the southeast corner of section seven (7), township eight (8) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section seventeen (17), township eight (8) north, range twenty-three (23) east; thence south six (6) miles to the southeast corner of section eight (8), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section sixteen (16), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section sixteen (16), township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the north quarter ($\frac{1}{4}$) corner of section twenty-two (22), township seven (7) north, range twenty-three (23) east; thence south two miles to the south quarter ($\frac{1}{4}$) corner of section twenty-seven (27), township seven (7) north, range twenty-three (23) east; thence east one-half ($\frac{1}{2}$) mile to the northeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section two (2), township six (6) north, range twenty-three (23) east; thence south two (2) miles to the southeast corner of section eleven (11), township six (6) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section thirteen (13), township six (6) north, range twenty-three (23) east; thence south ten (10) miles to the southeast corner of section thirty-six (36), township five (5) north, range twenty-three (23) east; thence east to the southeast corner of township five (5) north, range twenty-six (26) east; thence north to the southwest corner of section thirty (30), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section twenty-nine (29), township six (6) north, range twenty-seven (27) east; thence north to the southeast corner of section twenty (20), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section twenty-two (22) of township six (6) north, range twenty-seven (27) east; thence north to the northeast corner of section twenty-two (22), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section

thirteen (13), township six (6) north, range twenty-nine (29) east; thence north to the northeast corner of township six (6) north, range twenty-nine (29) east; thence east to the southeast corner of section thirty-one (31), township seven (7) north, range thirty (30) east; thence north to the southwest corner of section twenty (20), township seven (7) north, range thirty (30) east; thence east to the southeast corner of said section twenty (20); thence north to the northeast corner of said section twenty (20); thence east to the southeast corner of section sixteen (16), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section sixteen (16); thence east to the southeast corner of section ten (10), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section ten (10); thence east to the southeast corner of section two (2), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section two (2); thence east to the southeast corner of township eight (8) north, range thirty-one (31) east; thence north along the line between ranges thirty-one (31) and thirty-two (32) east to the second standard parallel north; thence west along said standard parallel to the southeast corner of section thirty-four (34), township nine (9) north, range thirty-one (31) east; thence north along the east line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3) said township nine (9) north, range thirty-one (31) east, and the east line of section thirty-four (34), township ten (10) north, range thirty-one (31) east to the southwest corner of section twenty-six (26), township ten (10) north, range thirty-one (31) east; thence west along the south line of sections twenty-seven (27) and twenty-eight (28), said township and range, to the center of the channel of the Musselshell river; thence in a northerly direction following the center of the channel of said Musselshell river to the place of beginning. The county seat is Roundup, Montana.

History: County created out of Fergus and Yellowstone, Ch. 25, L. 1911; effective March 1, 1911; boundary line with Rosebud county changed by Ch. 108, L. 1917,

effective Feb. 28, 1917; portion detached by creation of Golden Valley county, Oct. 4, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4336, R. C. M. 1921.

4337. PARK COUNTY. Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east, and running thence north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) in each of townships five (5), four (4), three (3), two (2) and one (1), respectively, range twelve (12) east to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve

(12) east; thence north along the line between ranges eleven (11) and twelve (12) east to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence west along the half section line through the center of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township five (5) north, ranges eleven (11), ten (10), nine (9) and eight (8) east to the quarter corner on the west line of section eighteen (18), township five (5) north, range eight (8) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east, thence south along the range line between ranges seven (7) and eight (8) east to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11) and ten (10) to the east quarter corner of section nine (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone national park, and thence east along the north boundary line of the Yellowstone national park to the northeast corner thereof; thence south along the east boundary line of the Yellowstone national park to an intersection with the boundary line between Montana and Wyoming; thence east along said boundary line between Montana and Wyoming to an intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the line between ranges fifteen (15) and sixteen (16) east; to the northeast corner of township eight (8) south, range fifteen (15) east; thence west along the line between townships seven (7) and eight (8), south to the place of beginning. The county seat is Livingston, Montana.

History: County created Feb. 23, 1887, Comp. Stat. 1887, p. 1238, effective May 1, 1887; Secs. 4121, 4135, Pol. C. 1895; Carbon county created out of part of, March 4, 1895, L. 1895, pp. 49-54, Sweet Grass

county created from part of, March 5, 1895, L. 1895, pp. 54-58; Secs. 2812, 2833, Rev. C. 1907; boundaries changed by Ch. 60 L. 1913; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4337, R. C. M. 1921.

4337.1. PETROLEUM COUNTY. Beginning at a point at the middle of the main channel of the Missouri river opposite the middle of the main channel of the Musselshell river, running thence up the middle of the main channel of the Musselshell river to its intersection with the township line between townships 11 and 12 north; thence west along said township line to the range line between ranges 24 and 25 east, which is the southwest corner of Township 12 north of range 25 east of the Montana principal meridian; thence north to the northwest corner of said town-

ship; thence east to the southwest corner of township 13 north of range 25 east of the Montana principal meridian; thence north to the southeast corner of township 16 north of range 24 east, Montana principal meridian; thence west to the southwest corner of said township and range; thence north to the northwest corner of said township and range; thence east to the southwest corner of township 17 north of range 24 east; thence north to the northwest corner of said township and range; thence east to the southwest corner of township 18 north of range 25 east; thence north approximately $2\frac{1}{2}$ miles to the quarter corner on the west side of section 19 in township 18 north of range 25 east; thence east along the median line a distance of approximately twelve miles to the quarter corner on the east line of section 24 in township 18 north of range 26 east; thence north approximately one-half mile to the southwest corner of section 18 in township 18 north of range 27 east; thence east to the southeast corner of said section in said township and range approximately one mile; thence north approximately 15 miles to the northeast corner of section 6 in township 20 north of range 27 east; thence along the township line between townships 20 and 21 north to the southwest corner of township 21 north of range 27 east; thence north along the range line between ranges 26 and 27 east to the intersection of said range line with the middle of the main channel of the Missouri river; thence down stream along the middle of the main channel of the Missouri river to the place of beginning. The city of Winnett, Montana, is hereby declared to be the county seat.

History: En. by resolution, effective February 22, 1925, p. 505, L. 1925.

4338. PHILLIPS COUNTY. Commencing at a point where the range line between ranges thirty-four (34) and thirty-five (35) east of the Montana meridian joins the international boundary line between the United States and Canada; thence running south about thirty (30) miles along said range line observing the offsets and corrections, to a point where said range line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east along said township line about three-fourths ($\frac{3}{4}$) of a mile to a point on said township line where said line intersects the section line between sections four (4) and five (5), in township thirty-two (32) north, range thirty-five (35) east; thence south about four and one-half ($4\frac{1}{2}$) miles on the section line to a point where said section line intersects the center of the channel of the Milk river; thence westerly about three (3) miles along the center of the channel of Milk river to a point where the same intersects the section line between sections twenty-three (23) and twenty-four (24), in township thirty-two (32) north, range thirty-four (34) east; thence south about two (2) miles along the section line to a point where said section line intersects the township line between townships thirty-one (31) and thirty-two (32) north; thence west about two (2) miles along said township line to the section corner common to sections three (3) and four (4), in township thirty-one (31) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships thirty (30) and thirty-one (31) north; thence east about two (2) miles on said township line to the northwest corner of section one (1), township thirty (30) north, range

thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships twenty-nine (29) and thirty (30) north; thence west about five (5) miles along said township line to a point where said township line intersects the range line between ranges thirty-three (33) and thirty-four (34) east; thence south about forty-three (43) miles along said range line; observing the offsets and corrections, to a point where said range line intersects the center of the channel of the Missouri river; thence westerly about one hundred and five (105) miles along the said center of the channel of the Missouri river to a point where the same intersects a north and south line through the center of township twenty-three (23) north, range twenty-two (22) east; thence north about eight (8) miles through the center of townships twenty-three (23) and twenty-four (24) north, range twenty-two (22) east to a point where said line intersects the township line between townships twenty-four (24) and twenty-five (25) north; thence east about three-fourths ($\frac{3}{4}$) of a mile on said township line to a point where said township line intersects the north and south line through the center of township twenty-five (25) north, range twenty-two (22) east; thence northerly along said north and south line through the center of township twenty-five (25) north, range twenty-two (22) east about three and one-half ($3\frac{1}{2}$) miles to a point where said line intersects the south boundary line, or said south boundary line produced, of the Fort Belknap Indian reservation; thence easterly along the south boundary line of said reservation about eleven and one-half ($11\frac{1}{2}$) miles to a point where the south boundary of said reservation intersects the west boundary of the Jefferson national forest; thence northerly about five (5) miles along said west boundary line of said Jefferson national forest to the northwest corner of said Jefferson national forest; thence easterly about seven and one-half ($7\frac{1}{2}$) miles along the north boundary of said Jefferson national forest to a point where said boundary line, of the said boundary line produced, intersects the range line between ranges twenty-five (25) and twenty-six (26) east; thence northerly about thirty-two (32) miles, observing offsets and corrections, along the line between ranges twenty-five (25) and twenty-six (26) east to a point where said line intersects the center of the channel of the Milk river; thence easterly along the center of the channel of Milk river about six (6) miles to a point where the same intersects the section line between sections twenty-seven (27) and twenty-eight (28), in township thirty-one (31) north, range twenty-six (26) east; thence north about ten (10) miles along the section line through the center of township thirty-one (31) and thirty-two (32) north, range twenty-six (26) east to a point where said line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east about one (1) mile on said township line to a point where said township line intersects a north and south line through the center of township thirty-three (33) north, range twenty-six (26) east; thence north about twelve (12) miles through the center of townships thirty-three (33) and thirty-four (34) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-four (34) and thirty-five (35) north; thence east on said township line about three (3) miles

to a point where said township line intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence north about eighteen (18) miles along said range line observing the offsets and corrections, to a point where said range line joins the international boundary line between the United States and Canada; thence easterly along said international boundary line about forty-eight (48) miles to the place of beginning. The county seat is Malta, Montana.

History: County created by petition and election, effective Feb. 5, 1915, from portion of Valley and Blaine counties; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4338, E. C. M. 1921.

4339. PONDERA COUNTY. Beginning at a point at the intersection of the line between township twenty-nine (29) and thirty (30) north with the summit of the main divide of the Rocky mountains; thence in an easterly direction on the township line between townships twenty-nine (29) and thirty (30) north, to the southeast corner of section thirty-six (36), township thirty (30) north, range eight (8) west; thence due north on the line between ranges seven (7) and eight (8) west to the northeast corner of section one (1), township thirty-one (31) north, range eight (8) west; thence in an easterly direction on the township line between townships thirty-one (31) and thirty-two (32) to a point where said township line intersects with the Marias river; thence following on down the center of the channel of the Marias river to its intersection with the section line between sections fifteen (15) and sixteen (16), township thirty-one (31) north, range three (3) west; thence south about three (3) miles to the southwest corner of section thirty-four (34), township thirty-one (31) north, range three (3) west; thence east about nine (9) miles to the northwest corner of section six (6), township thirty (30) north, range one (1) west; thence south about three (3) miles to the southwest corner of section eighteen (18), township thirty (30) north, range one (1) west; thence east about six (6) miles to the southeast corner of section thirteen (13), township thirty (30) north, range one (1) west; thence south about nine (9) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range one (1) east; thence due east along the boundary lines between townships twenty-eight (28) north and twenty-nine (29) north, to the northeast corner of township twenty-eight (28) north, range two (2) east; thence south along the boundary line between range two (2) and three (3) east, to the northeast corner of section twenty-five (25), township twenty-six (26) north, range two (2) east; thence due west along the section line to the southwest corner of section twenty-two (22) township twenty-six (26) north, range three (3) west; thence due north along the section line to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range three (3) west; thence due west along the township line three (3) miles, to the southwest corner of section thirty-one (31), township twenty-seven (27) north, range three (3) west; thence due north along the township line three (3) miles to the southwest corner of section eighteen (18), township twenty-seven (27) north, range three (3) west; thence due west along the section line to the southwest corner of section eighteen (18), township twenty-seven (27) north, range four (4) west, a distance of six (6) miles;

thence due north along the township line between ranges four (4) and five (5) west, a distance of three (3) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range four (4) west; thence due west along the line between township twenty-seven (27) north and twenty-eight (28) north, to a point where such line, if extended, would intersect the summit of the main range of the Rocky mountains; thence in a northwesterly direction along the summit of the main range of the Rocky mountains to the point of beginning. The county seat is Conrad, Montana.

History: County created by Ch. 22, L. 1919, effective April 1, 1919, from portions of Teton and Chouteau counties; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4339, R. C. M. 1921.

4340. POWDER RIVER COUNTY. Beginning at the intersection of the Montana base line with the range line between ranges fifty-four (54) and fifty-five (55) east; thence due south along said range line to its intersection with the Montana-Wyoming state line; thence due west along the Montana-Wyoming state line to its intersection with the range line between ranges forty-four (44) and forty-five (45) east; thence due north along the range line between ranges forty-four (44) and forty-five (45) east to the point of intersection with the Montana base line; thence due east along the Montana base line to the point of beginning. The county seat is Broadus, Montana.

History: County created by Ch. 141, L. 1919, effective April 1, 1919, from portion of Custer county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4340, R. C. M. 1921.

See also Secs. 4340.1 and 4340.2, establishing the boundary between Powder River and Carter counties.

4340.1. Boundary line between Carter and Powder River counties established. That the boundary line between Powder River county and Carter county of the state of Montana, be, and the same is hereby established and defined and shall hereafter be known as follows:

Beginning at the intersection of the Montana base line with the range line between ranges 54½ east and 55 east thence due south along said line to the line between township one (1) south and township two (2) south; thence due east approximately one-half mile to the line between township 54 east and township 55 east thence due south along said range line to its intersection with the Montana Wyoming state line.

History: En. Sec. 1, Ch. 45, L. 1929.

4340.2. Alteration of boundaries of Carter and Powder River counties. The boundaries of Carter county are hereby altered to conform to the boundaries of Powder River county as established by this act.

History: En. Sec. 2, Ch. 45, L. 1929.

4341. POWELL COUNTY. Beginning at the southeast corner of section fourteen (14) in township six (6) north, range eight (8) west, and running thence west by section lines to an intersection with the line between ranges eleven (11) and twelve (12) west; thence north along said line to the intersection of the divide between the Hell Gate and Big Blackfoot rivers; thence northwesterly along the summit of said divide to an intersection of the line between ranges thirteen (13) and fourteen (14)

west; thence due north along said line, observing the offsets and corrections thereto to the northwest corner of township sixteen (16) north, range thirteen (13) west; thence running west along the fourth standard parallel north to its intersection with a line extended due north from the summit of Medicine Tree hill; thence running north along said line to an intersection with the south line of the north tier of sections of township twenty-one (21) north; thence east along the south line of the north tier of sections of said township twenty-one (21) north to the summit of the main range of the Rocky mountains; thence southerly following the summit of the main range of the Rocky mountains to the point where said summit is intersected by the west boundary line of range eleven (11) west; thence south along the west boundary line of townships twenty (20), nineteen (19), eighteen (18) and seventeen (17), north of said range eleven (11) west to the southwest corner of township seventeen (17) north, range eleven (11) west; thence east along the south boundary of township seventeen (17) north, ranges eleven (11) and ten (10) west, to the northwest corner of township sixteen (16) north, range nine (9) west; thence south along the west line of townships sixteen (16), fifteen (15), fourteen (14) and thirteen (13) north, range nine (9) west to the southwest corner of township thirteen (13) north, range nine (9) west; thence east along the south boundary line of township thirteen (13) north of ranges nine (9) and eight (8) west to the northwest corner of township twelve (12) north, range seven (7) west; thence south along the west boundary line of townships twelve (12) and eleven (11) north, range seven (7) west to the corner between sections eighteen (18) and nineteen (19) of said township eleven (11) north of range seven (7) west; thence east along the south boundary lines of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13) of said township eleven (11) north, range seven (7) west to the boundary line between said township eleven (11) north, range seven (7) west and township eleven (11) north, range six (6) west; thence south along the west boundary line of said township eleven (11) north, range six (6) west to the southwest corner of said township eleven (11) north, range six (6); thence east along the south boundary line of said township eleven (11) north, range six (6) west to the point of intersection with the summit of the main range of the Rocky mountains; thence southerly along the summit of the main range of the Rocky mountains to its intersection with the north boundary of township six (6) north, range eight (8) west; thence west to the northeast corner of section two (2) in said township six (6) north, range eight (8) west; thence running south by section lines to the place of beginning. The county seat is Deer Lodge, Montana.

History: County created Jan. 31, 1901, L. 1901, pp. 101-106; part of Lewis and Clark added to, Ch. 106, L. 1903; Secs. 2836, 2837, Rev. C. 1907; part added to

Missoula county, Ch. 46, L. 1915; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4341, R. C. M. 1921.

4342. PRAIRIE COUNTY. Beginning at the northeast corner of township sixteen (16) north, range fifty (50) east; thence at right angles due south along the range line between ranges fifty (50) and fifty-one (51) east, to the southwest corner of section seven (7), township fourteen (14) north, range fifty-one (51) east; thence running at right angles due east

along section lines to the northeast corner of section thirteen (13), township fourteen (14) north, range fifty-one (51) east; thence running at right angles due south to the southeast corner of township fourteen (14) north, range fifty-one (51) east; thence running at right angles due east along the north line of township thirteen (13) north, to the northeast corner of township thirteen (13) north, range fifty-two (52) east; thence running at right angles due south one (1) mile to the southwest corner of section six (6), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east to the southeast corner of said section six (6), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due south one (1) mile to the southwest corner of section eight (8), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east one (1) mile to the northeast corner of section seventeen (17), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due south along section lines to the southwest corner of section twenty-one (21), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east along the north line of section twenty-eight (28), twenty-seven (27), twenty-six (26), twenty-five (25), township thirteen (13) north, range fifty-three (53) east; thence along the north line of sections thirty (30), twenty-nine (29), twenty-eight (28), twenty-seven (27), twenty-six (26), twenty-five (25) of townships thirteen (13) north, fifty-four (54) east and thirteen (13) north, fifty-five (55) east to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifty-six (56) east; thence due south along the east line of sections twenty-seven (27) and thirty-four (34), to the southeast corner of section thirty-four (34), township thirteen (13), north, range fifty-six (56) east; thence west to the northwest corner of section six (6), township twelve (12) north, range fifty-seven (57) east; thence running at right angles due south along the east line of range fifty-six (56) to the southeast corner of township eleven (11) north, range fifty-six (56) east; thence at right angles due west along the south line of township eleven (11) north, to the northwest corner of township ten (10) north, range fifty-six (56) east; thence south to the northwest corner of section nineteen (19), township ten (10) north, range fifty-six (56) east; thence running at right angles due west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township ten (10) north, range fifty-five (55) east to the northwest corner of section nineteen (19), township ten (10) north, range fifty-five (55) east; thence running at right angles due south to the southwest corner of township ten (10) north, range fifty-five (55) east; thence running due west along the south line of township ten (10) north, range fifty-four (54) east, to the northwest corner of township nine (9) north, range fifty-four (54) east; thence due south two (2) miles to the southeast corner of section twelve (12), township nine (9) north, range fifty-three (53) east; thence due west along section lines to the southwest corner of section seven (7), township nine (9) north, range fifty-two (52) east; thence due north along the line between ranges fifty-one (51) and fifty-two (52) to the southeast corner of township ten (10) north,

range fifty-one (51) east; thence due west along the north line of township nine (9) north, to the southwest corner of section thirty-three (33), township ten (10) north, range fifty (50) east; thence at right angles due north two (2) miles to the northeast corner of section twenty-nine (29), township ten (10) north, range fifty (50) east; thence at right angles due west to the northwest corner of section thirty (30), township ten (10) north, range fifty (50) east; thence along the line between ranges forty-nine (49) and fifty (50) to the northeast corner of township ten (10) north, range forty-nine (49) east; thence at right angles due west to the northwest corner of section four (4), township ten (10) north, range forty-nine (49) east; thence north to the northwest corner of section four (4), township eleven (11) north, range forty-nine (49) east; thence west to the southwest corner of township twelve (12) north, range forty-nine (49) east; thence north to the northwest corner of township twelve (12) north, range forty-nine (49) east; thence west to the southwest corner of township thirteen (13) north, range forty-seven (47) east; thence north along the west line of township thirteen (13) north to the northeast corner of section twenty-five (25), township thirteen (13) north, range forty-six (46) east; thence west along the section line to the southwest corner of section nineteen (19), township thirteen (13) north, range forty-five (45) east; thence north along the west line of townships thirteen (13), fourteen (14), fifteen (15) and sixteen (16) north, to the northwest corner of township sixteen (16) north, range forty-five (45) east; thence due east along the north line of township sixteen (16) north to the northeast corner of township sixteen (16) north, range forty-five (45) east; thence due south to the northeast corner of township fifteen (15) north, range forty-five (45) east; thence due east to the northeast corner of township fifteen (15) north, range forty-six (46) east; thence due north to the northwest corner of township sixteen (16) north, range forty-seven (47) east; thence due east along the north line of township sixteen (16) north to the place of beginning. The county seat is Terry, Montana.

History: County created by petition and election, effective Feb. 5, 1915, from parts of Dawson, Custer and Fallon counties; boundaries extended March 9, 1917,

Ch. 139, L. 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4342, R. C. M. 1921.

4343. RAVALLI COUNTY. Beginning at the intersection of the boundary line between Montana and Idaho with the line dividing townships ten (10) and eleven (11) north, range twenty-two (22) west, and running thence in a general southerly direction following said boundary line to an intersection of the summit of the Bitter Root mountains with the continental divide, said intersection being six (6) miles, more or less, northwest of the crossing of the Dehalonega pass; thence running in a general northeasterly direction along the top of the continental divide to an intersection with the summit of the divide between Bitter Root river and Rock creek; thence following the summit of said divide in a northerly direction to its intersection with the north line of township ten (10) north, range eighteen (18) west; thence following the line between township ten (10) north and eleven (11) north, west to the point of beginning. The county seat is Hamilton, Montana.

History: County created, effective April 1, 1893, L. 1893, pp. 209-212; Sec. 1 of act amended by act approved March 2, 1893, L. 1893, p. 212; Sec. 4129, Pol. C.

1895; Sec. 2827, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4343, R. C. M. 1921.

4344. RICHLAND COUNTY. Beginning at the point of intersection of the range line between ranges fifty (50) and fifty-one (51) east at the center of the main channel of the Missouri river; running thence south along the range line between ranges fifty (50) and fifty-one (51) east to the north line of township twenty-four (24) north, range fifty-one (51) east; thence west along the north line of township twenty-four (24) north to the northeast corner of township twenty-four (24) north, range fifty (50) east; thence south along the range line between ranges fifty (50) and fifty-one (51) east to the southeast corner of township twenty-three (23) north, range fifty-one (51) east; thence east along the south line of township twenty-three (23) north, ranges fifty-one (51) and fifty-two (52) east to the northwest corner of township twenty-two (22) north, range fifty-three (53) east; thence south along the line between ranges fifty-two (52) and fifty-three (53) east to the southwest corner of township twenty-two (22) north, range fifty-three (53) east; thence east along the line between townships twenty-one (21) and twenty-two (22) north to the northwest corner of township twenty-one (21) north, range fifty-six (56) east; thence south on the line between ranges fifty-five (55) and fifty-six (56) east to the southwest corner of said township twenty-one (21) north, range fifty-six (56) east; thence east along the line between townships twenty (20) and twenty-one (21) north to the northwest corner of township twenty (20) north, range fifty-seven (57) east; thence south to the southwest corner of township nineteen (19) north, range fifty-seven (57) east; thence east along the line between townships eighteen (18) and nineteen (19) north to the southwest corner of township nineteen (19) north, range sixty (60) east; thence north on the line between ranges fifty-nine (59) and sixty (60) east to the southwest corner of section eighteen (18), and township nineteen (19) north, range sixty (60) east; thence east on the section line to the Montana-North Dakota boundary; thence north along said Montana-North Dakota boundary to its intersection with the center of the main channel of the Missouri river; thence in a westerly direction following the center of the said channel to the place of beginning. The county seat is Sidney, Montana.

History: County created by petition and election, effective May 27, 1914, from portion of Dawson county; conflict in southern boundary by creation of Wibaux county, Aug. 17, 1914; southern boundary

fixed by Ch. 24, L. 1915, effective Feb. 19, 1915; portion detached by creation of McCone county, Ch. 33, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4344, R. C. M. 1921.

4345. ROOSEVELT COUNTY. Beginning at a point at the northwest corner of township thirty-two (32) north, range forty-six (46) east; thence east along the township line between township thirty-two (32) and thirty-three (33) north, a distance of about forty-eight (48) miles to the northeast corner of township thirty-two (32) north, range fifty-three (53) east; thence south a distance of about six (6) miles along the range line between ranges fifty-three (53) and fifty-four (54) to the southeast corner of township thirty-two (32) north, range fifty-three (53) east; thence east along the township line a distance of about six (6) miles between

townships thirty-one (31) and thirty-two (32), to the northeast corner of township thirty-one (31) north, range fifty-four (54) east; thence south a distance of about six (6) miles to the southeast corner of township thirty-one (31) north, range fifty-four (54) east; thence east along the township line between townships thirty (30) and thirty-one (31) north to the boundary line of the states of Montana and North Dakota; thence south to the Missouri river; thence west on a meandering line following the center of the present main channel of the Missouri river so as to include all that portion of sections one (1), two (2), six (6), seven (7), eleven (11), twelve (12) and thirteen (13) in township twenty-seven (27) north, range forty-nine (49) east, which lies north of the present main channel of the Missouri river, to an intersection with the line between ranges forty-five (45) and forty-six (46) east; thence in a northerly direction along said line, observing the offsets and corrections, to the place of beginning. The temporary county seat is Poplar, Montana.

History: County created by Ch. 23, L. 1919, effective Feb. 18, 1919, from portion of Sheridan county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4345, R. C. M. 1921.

NOTE.—In accordance with the usual provisions for changing county seats, the county seat of Roosevelt county has been changed from Poplar to Wolf Point, Montana.

4346. ROSEBUD COUNTY. Beginning at the northeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; thence west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-four (44) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-three (43) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-two (42) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-one (41) east and the north line of section thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty (40) east; thence north for a distance of one (1) mile to the northeast corner of section twenty-five (25), township thirteen (13) north, range thirty-nine (39) east, the same being two (2) miles north of the third standard parallel; thence west on the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-nine (39) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-eight (38) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-seven (37) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-six (36) east, and the

north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-five (35) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-four (34) east, to the northwest corner of section thirty (30) township thirteen (13) north, range thirty-four (34) east; thence south to the northeast corner of section thirty-six (36), township thirteen (13) north, range thirty-three (33) east, the same being one (1) mile north of the third standard parallel; thence west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31), in township thirteen (13) north, range thirty-three (33) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range thirty-two (32) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31), in township thirteen (13) north, range thirty-one (31) east, and the north line of sections thirty-six (36), thirty-five (35) and thirty-four (34) in township thirteen (13) north, range thirty (30) east, to a point in the center of the channel of the Musselshell river, where said section line intersects said river, the same being a point one (1) mile north of the third standard parallel; thence in a southerly direction following the center of said channel to the southeast corner of section twenty-nine (29), township ten (10) north, range thirty-one (31) east; running thence east along the south line of sections twenty-eight (28) and twenty-seven (27) to the southwest corner of section twenty-six (26) in township ten (10) north, range thirty-one (31) east; thence south along the east line of section thirty-four (34), township ten (10) north, range thirty-one (31) east and along the east line of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), township nine (9) north, range thirty-one (31) east to the southeast corner of said section thirty-four (34) in township nine (9) north, range thirty-one (31) east; thence east along the line between townships eight (8) and nine (9) north, to the northeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence south along the section line to the southeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence east to the intersection of the south boundary line of section one (1) with the range line between ranges thirty-six (36) and thirty-seven (37) east; thence south along the range line between ranges thirty-six (36) and thirty-seven (37) east, to the intersection of the north township line of township seven (7) north; thence east along the township line of township seven (7) north to the intersection with the range line between ranges thirty-seven (37) and thirty-eight (38) east; thence south along the line between ranges thirty-seven (37) and thirty-eight (38) east, to the center of the main channel of the Yellowstone river; thence in a southeasterly course along the main channel of the Yellowstone river to the east line of section six (6), township six (6) north, range thirty-eight (38) east; thence due south along the east line of sections six (6), seven

(7), eighteen (18), nineteen (19), thirty (30) and thirty-one (31) of townships six (6) and five (5) north, range thirty-eight (38) east, to the southeast corner of section thirty-one (31), township five (5) north, range thirty-eight (38) east; thence along the north line of township four (4) north, range thirty-eight (38) east, to the northeast corner of township four (4) north, range thirty-eight (38) east; thence south to the northwest corner of section nineteen (19), township one (1) north, range thirty-nine (39) east; thence east to the northeast corner of section twenty-one (21), township one (1) north, range thirty-nine (39) east; thence south to the southeast corner of section thirty-three (33), township one (1) north, range thirty-nine (39) east; thence west to the northeast corner of section four (4), township one (1) south, range thirty-nine (39) east; thence south along the east line of sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28) and thirty-three (33) of township one (1) south, range thirty-nine (39) east and the east line of section four (4) produced, township two (2) south, range thirty-nine (39) east, to an intersection with the northern boundary line of the northern Cheyenne Indian reservation; thence east following the northern boundary line of the said Indian reservation to its intersection with the east line of township two (2) south, range forty (40) east; thence south along the line between ranges forty (40) and forty-one (41) east to the southwest corner of township five (5) south, range forty-one (41) east; thence west along the first standard parallel south to the northeast corner of township six (6) south, range forty (40) east; thence south on the line between ranges forty (40) and forty-one (41) east to the northwest corner of township eight (8) south, range forty-one (41) east; thence east to the northeast corner of township eight (8) south, range forty-four (44) east; thence north on the line between ranges forty-four (44) and forty-five (45) east, observing all corrections and offsets of the eleventh guide meridian to the northeast corner of township twelve (12) north, range forty-four (44) east; thence east along the third standard parallel north to the southeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; thence north along the east line of said section thirty-six (36) to the northeast corner thereof, being the place of beginning. The county seat is Forsyth, Montana.

History: County created Feb. 11, 1901, L. 1901, pp. 97-101, effective March 1, 1901; Sec. 2839, Rev. C. 1907; Big Horn county created, including part of, Jan. 13, 1913; boundary line with Dawson county changed, Ch. 36, L. 1917; boundary line with Musselshell changed, Ch. 108, L.

1917; boundary line with Yellowstone county changed, Ch. 159, L. 1917; boundary line with Musselshell changed, Ch. 108, L. 1917; Treasure county detached, Ch. 5, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4346, R. C. M. 1921.

4347. SANDERS COUNTY. Beginning at the intersection of the center of the channel of the Flathead river with the south line of the north tier of sections of township twenty-one (21) north; thence running southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township nineteen (19) north, range twenty-one (21) west, said point being approximately two (2) miles east of the southwest corner of said township; thence east on the line between townships eighteen (18) and nineteen (19) north, to the point where said line intersects the line between

ranges twenty (20) and twenty-one (21) west; thence south on said line between ranges twenty (20) and twenty-one (21) west, to the summit of the range of mountains commonly called the Coeur d'Alene, said mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene mountains to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clark's Fork rivers; thence westerly along said summit dividing the waters of the Missoula and Clark's Fork rivers to the point where said summit intersects the Horse Plains guide meridian; thence due north along said Horse Plains guide meridian to the northeast corner of section twenty-five (25) in township eighteen (18) north, range twenty-six (26) west; thence due west three (3) miles to the southwest corner of section twenty-two (22), in said township and range; thence due north one (1) mile to the northeast corner of section twenty-one (21) in said township and range; thence due west to the line between ranges twenty-six (26) and twenty-seven (27) west; thence north on the line between ranges twenty-six (26) and twenty-seven (27) west, to the summit of the Coeur d'Alene mountains; thence westerly along the summit of said Coeur d'Alene mountains to the boundary line between the state of Montana and the state of Idaho, and northerly along said boundary line to an intersection with the divide between the Clark's Fork of the Columbia and the Kootenai rivers; thence running in an easterly and southeasterly direction following the summit of said divide to an intersection with the south line, or the south line extended, of section twelve (12), township twenty-six (26) north, range twenty-eight (28) west; thence running east seven (7) miles, more or less, along the south line of said section twelve (12) and the south line of sections seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), township twenty-six (26) north, range twenty-seven (27) west, to the southeast corner of section twelve (12), township twenty-six (26) north, range twenty-seven (27) west; thence south to the southwest corner of section eighteen (18), township twenty-six (26) north, range twenty-six (26) west; thence east one (1) mile to the southeast corner of said section eighteen (18); thence south along the section line to the southeast corner of section thirty-one (31); township twenty-five (25) north, range twenty-six (26) west; thence east along the sixth standard parallel north to the northeast corner of township twenty-four (24) north, range twenty-four (24) west; thence south on the line between ranges twenty-three (23) and twenty-four (24) west to the southwest corner of section eighteen (18), township twenty-three (23) north, range twenty-three (23) west; thence east one (1) mile to the southeast corner of said section eighteen (18); thence south a distance of ten (10) miles more or less following the section line to the southeast corner of section six (6), township twenty-one (21) north, range twenty-three (23) west; thence east following the south line of the north tier of sections of township twenty-one (21) north, to the place of beginning. The county seat is Thompson Falls, Montana.

History: County created from portion of Missoula, March 1, 1906, Ch. 9, L. 1905; Sec. 2841, Rev. C. 1907; boundaries changed Feb. 25, 1911, Ch. 54, L. 1911; boundaries changed Feb. 28, 1913, Ch. 42,

L. 1913, defining Flathead; boundaries changed March 1, 1913, Ch. 46, L. 1913, defining Lincoln; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4347, R. C. M. 1921.

4348. SHERIDAN COUNTY. Commencing at a point on the northern boundary line of the state of Montana which is intersected by the range line between ranges fifty (50) and fifty-one (51) east, and running thence south along said range line a distance of six (6) miles more or less to the southeast corner of township thirty-seven (37) north, range fifty (50) east; thence east on the township line between townships thirty-seven (37) and thirty-six (36) north, range fifty-one (51) east a distance of one (1) mile to the line between sections three (3) and four (4), township thirty-six (36) north, range fifty-one (51) east; thence directly south on the section line a distance of about eighteen (18) miles to the southeast corner of section thirty-three (33), township thirty-four (34) north, range fifty-one (51) east; thence east on the township line between townships thirty-three (33) and thirty-four (34) north, range fifty-one (51) east for a distance of three (3) miles to the southeast corner of township thirty-four (34) north, range fifty-one (51) east; thence south on the line between ranges fifty-one (51) and fifty-two (52) east, a distance of six (6) miles to the southeast corner of township thirty-three (33) north, range fifty-one (51) east; thence east along the eighth standard parallel north between townships thirty-two (32) and thirty-three (33) north to the northeast corner of township thirty-two (32) north, range fifty-three (53) east; thence south a distance of about six (6) miles along the line between ranges fifty-three (53) and fifty-four (54) east to the southeast corner of township thirty-two (32) north, range fifty-three (53) east; thence east along the township line a distance of about six (6) miles between townships thirty-one (31) and thirty-two (32) north, to the northeast corner of township thirty-one (31) north, range fifty-four (54) east; thence south a distance of about six (6) miles to the southeast corner of township thirty-one (31) north, range fifty-four (54) east; thence east along the line between townships thirty (30) and thirty-one (31) north, to its intersection with the boundary line between the state of Montana and the state of North Dakota; thence in a northerly direction along the eastern boundary line of the state of Montana, to the point where said boundary line is intersected by the boundary line between the state of Montana and the Dominion of Canada; thence in a westerly direction along the northern boundary line of the state of Montana to the point of beginning. The county seat is Plentywood, Montana.

History: County created by petition and election, effective March 24, 1913, from portion of Valley county; Roosevelt county detached by Ch. 23, L. 1919, effec-

tive Feb. 18, 1919; Daniels county detached, Aug. 30, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4348, R. C. M. 1921.

4349. SILVER BOW COUNTY. Beginning at a point where the line of the divide between the headwaters of Brown's gulch and Dry Cottonwood creek intersects the continental divide and running thence southwesterly along the line of the said divide between the headwaters of Brown's gulch and Dry Cottonwood creek to the point where said divide intersects the first standard parallel north of the Montana base line; thence running west along said standard parallel to the Deer Lodge guide meridian; thence south to the southeast corner of township four (4) north, range ten (10) west; thence west to the southwest corner of section thirty-three (33), township four (4) north, range ten (10) west; thence

in a southerly and westerly direction to the top of the divide between Willow creek and Beef strait; thence along the top of said divide to the point where it intersects the main range of the Rocky mountains; thence following the summit of said main range of the Rocky mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear creek and Johnson creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole river; thence down the center of said river to the mouth of Camp creek; thence up Camp creek to its right-hand fork; thence up said fork to its source; thence in a direct line to the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road, leading from Parson's bridge to the city of Butte, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll gate; thence up the north fork of Little Pipestone creek to its source; thence in a direct line to the nearest point of the continental divide; thence northerly along said continental divide to the place of beginning. The county seat is Butte, Montana.

History: County created Feb. 16, 1881, L. 1881, p. 85; boundaries changed March 7, 1883, L. 1883, p. 97; Sec. 741, 5th Div. Comp. Stat. 1887; Granite county created out of part of, March 2, 1893, L. 1893, p. 212; Sec. 4118, Pol. C. 1895; part added to

Deer Lodge county, Ch. 62, L. 1903; Secs. 2806, 2790, Rev. C. 1907; part of Deer Lodge county added to and boundaries defined, Ch. 21, L. 1917, effective May 1, 1917; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4349, R. C. M. 1921.

4350. STILLWATER COUNTY. Beginning on the east line of section thirty-five (35), township two (2) south, range twenty-three (23) east, where same is intersected by the mid-channel of the Yellowstone river; thence north along the east line of section thirty-five (35) and twenty-six (26), to the northeast corner of section twenty-six (26), township two (2) south, range twenty-three (23) east; thence west along the north line of said section twenty-six (26) to the northwest corner thereof; thence north along the east line of section twenty-two (22), township two (2) south, range twenty-three (23) east, to the northeast corner of section twenty-two (22), said township and range; thence west along the north line of said section twenty-two (22) to the northwest corner thereof; thence north along the east line of sections sixteen (16) and nine (9), township two (2) south, range twenty-three (23) east, to the northeast corner of section nine (9), said township and range; thence west along the north line of section nine (9), township two (2) south, range twenty-three (23) east, to the northwest corner of said section nine (9); thence north along the east line of section five (5), said township and range, to the southeast corner of section thirty-two (32), township one (1) south, range twenty-three (23) east; thence north along the east line of sections thirty-two (32), twenty-nine (29), twenty (20), seventeen (17), eight (8) and five (5), township one (1) south, range twenty-three (23) east, to the base line; thence east along the base line to the southeast corner of section thirty-one (31), township one (1) north, range twenty-three (23) east; thence north along the east line of sections thirty-one (31), thirty (30), nineteen (19), eighteen (18), seven (7) and six (6), of townships

one (1) and two (2) north, range twenty-three (23) east, to the northeast corner of section six (6), township two (2) north, range twenty-three (23) east; thence west along the north line of section six (6), township two (2) north, range twenty-three (23) east, to the southeast corner of township three (3) north, range twenty-two (22) east; thence north along the east line of townships three (3) and four (4) north, range twenty-two (22) east, to the first standard parallel north; thence west along the first standard parallel north to the northwest corner of section six (6), township four (4) north, range nineteen (19) east; thence south along the west line of townships four (4) and three (3) north, range nineteen (19) east, to the northeast corner of township two (2) north, range eighteen (18) east; thence west along the line between townships two (2) and three (3) north to the northeast corner of section five (5), township two (2) north, range eighteen (18) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29) and thirty-two (32) to the southeast corner of section thirty-two (32), township two (2) north, range eighteen (18) east; thence west along the north line of sections five (5) and six (6), township one (1) north, range eighteen (18) east, to the northwest corner of said section six (6); thence south along the line between ranges seventeen (17) and eighteen (18) east to the base line; thence west along said base line to the northwest corner of section six (6), township one (1) south, range eighteen (18) east; thence south along the west line of townships one (1) and two (2) south, range eighteen (18) east to the southwest corner of section thirty-one (31), township two (2) south, range eighteen (18) east; thence west along the north line of township three (3) south, range seventeen (17) east, to the northwest corner of section six (6), township three (3) south, range seventeen (17) east; thence south along the west line of township three (3) south, range seventeen (17) east, to the northeast corner of section twenty-four (24), township three (3) south, range sixteen (16) east; thence west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township three (3) south, range sixteen (16) east, to the northwest corner of section nineteen (19), in township three (3) south, range sixteen (16) east; thence south along the west line of township three (3) south, range sixteen (16) east, to the northeast corner of section one (1), township four (4) south, range fifteen (15) east; thence west along the north line of township four (4) south, range fifteen (15) east, to the northwest corner of section six (6), township four (4) south, range fifteen (15) east; thence south along the west line of townships four (4) and five (5) south, range fifteen (15) east, to the first standard parallel south; thence west along the first standard parallel south to a point which, when surveyed, will be the northwest corner of township six (6) south, range fourteen (14) east; thence south along the west line of townships six (6) and seven (7) south, range fourteen (14) east, to a point which, when surveyed, will be the southwest corner of section thirty-one (31), township seven (7) south, range fourteen (14) east; thence east along the south line of township seven (7) south, ranges fourteen (14), fifteen (15) and sixteen (16) east, to a point which, when surveyed, will be the southeast

corner of township seven (7) south, range sixteen (16) east; thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township six (6) south, range seventeen (17) east, to the southeast corner of section thirty-four (34), township six (6) south, range seventeen (17) east; thence north along the east line of sections thirty-four (34), twenty-seven (27), and twenty-two (22), to the northeast corner of section twenty-two (22), township six (6) south, range seventeen (17) east; thence east along the line between sections fourteen (14) and twenty-three (23), township six (6) south, range seventeen (17) east, to the southeast corner of section fourteen (14), township six (6) south, range seventeen (17) east; thence north along the east line of sections fourteen (14) and eleven (11), township six (6) south, range seventeen (17) east, to the northeast corner of section eleven (11), township six (6) south, range seventeen (17) east; thence east along the south line of section one (1), township six (6) south, range seventeen (17) east, to the southeast corner of said section one (1); thence north along the east line of township six (6) south, range seventeen (17) east, to the northeast corner of section one (1); thence east along the first standard parallel south to the southeast corner of section thirty-six (36), township five (5) south, range seventeen (17) east; thence north along the east line of township five (5) south, range seventeen (17) east, to the northeast corner of said section thirty-six (36), township five (5) south, range seventeen (17) east; thence east along the line between sections thirty (30) and thirty-one (31), township five (5) south, range eighteen (18) east, to the southeast corner of section thirty (30), township five (5) south, range eighteen (18) east; thence north along the east line of said section thirty (30), to the northeast corner thereof; thence east along the line between sections twenty (20) and twenty-nine (29), township five (5) south, range eighteen (18) east, to the southeast corner of said section twenty (20); thence north along the east line of said section twenty (20), to the northeast corner thereof; thence east along the line between sections sixteen (16) and twenty-one (21), township five (5) south, range eighteen (18) east, to the southeast corner of said section sixteen (16); thence north along the east line of said section sixteen (16), township five (5) south, range eighteen (18) east, to the northeast corner thereof; thence east along the line between sections ten (10) and fifteen (15), township five (5) south, range eighteen (18) east, to the southeast corner of said section ten (10); thence north along the east line of said section ten (10), to the northeast corner thereof; thence east along the south line of sections two (2) and one (1), township five (5) south, range eighteen (18) east, to the southeast corner of said section one (1); thence north along the east line of said section one (1), to the southwest corner of section thirty-one (31), township four (4) south, range nineteen (19) east; thence east along the south line of said section thirty-one (31), township four (4) south, range nineteen (19) east, to the southeast corner of said section; thence north along the east line of said section thirty-one (31), to the northeast corner thereof; thence east along the south line of sections twenty-nine (29), twenty-eight (28), and twenty-seven (27), township four (4) south, range nineteen (19) east, to the southeast corner

of said section twenty-seven (27); thence north along the east line of said section twenty-seven (27), township four (4) south, range nineteen (19) east, to the northeast corner thereof; thence east along the south line of sections twenty-three (23) and twenty-four (24), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-four (24); thence east along the south line of sections nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), township four (4) south, range twenty (20) east, to the southeast corner of said section twenty-four (24); thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township three (3) south, range twenty-one (21) east, to the southeast corner of section thirty-three (33), township three (3) south, range twenty-one (21) east; thence north along the east line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), and nine (9), in said township and range, to an intersection with the center of the channel of the Yellowstone river; thence down the center of the channel of the Yellowstone river to an intersection with the east line of section thirty-five (35), township two (2) south, range twenty-three (23) east, the place of beginning. The county seat is Columbus, Montana.

History: County created March 24, 1913, by petition and election, out of portions of Yellowstone, Carbon and Sweet Grass; part of Sweet Grass added to and part added to Sweet Grass, March 5, 1915, L. 1915, Ch. 74; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4350, R. C. M. 1921.

4351. SWEET GRASS COUNTY. Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east; and running thence north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), in each of townships five (5), four (4), three (3), two (2), and one (1), respectively, range twelve (12) east, to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve (12) east; thence north along the line between ranges eleven (11) and twelve (12) east, observing the offsets and corrections to the northwest corner of township five (5) north, range twelve (12) east; thence east along said township line to the northeast corner of township five (5) north, range sixteen (16) east; thence south along the range line to the southwest corner of township five (5) north, range seventeen (17) east; thence east along the first standard parallel north to the northeast corner of section four (4), township four (4) north, range seventeen (17) east; thence south along the section line to the southeast corner of section thirty-three (33), township four (4) north, range seventeen (17)

east; thence east along the township line to the southeast corner of township four (4) north, range eighteen (18) east; thence south along the range line to the southeast corner of township three (3) north, range eighteen (18) east; thence west along the line between townships two (2) and three (3) north, to the northeast corner of section five (5), township two (2) north, range eighteen (18) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32), to the southeast corner of section thirty-two (32), township two (2) north, range eighteen (18) east; thence west along the north line of sections five (5) and six (6), township one (1) north, range eighteen (18) east, to the northwest corner of said section six (6); thence south along the line between ranges seventeen (17) and eighteen (18) east, to the base line; thence west along said base line to the northwest corner of section six (6), township one (1) south, range eighteen (18) east; thence south along the west line of townships one (1) and two (2) south, range eighteen (18) east, to the southwest corner of section thirty-one (31), township two (2) south, range eighteen (18) east; thence west along the north line of township three (3) south, range seventeen (17) east, to the northwest corner of section six (6), township three (3) south, range seventeen (17) east; thence south along the west line of township three (3) south, range seventeen (17) east, to the northeast corner of section twenty-four (24), township three (3) south, range sixteen (16) east; thence west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), and nineteen (19), township three (3) south, range sixteen (16) east, to the northwest corner of section nineteen (19), in township three (3) south, range sixteen (16) east; thence south along the west line of township three (3) south, range sixteen (16) east, to the northeast corner of section one (1), township four (4) south, range fifteen (15) east; thence west along the north line of township four (4) south, range fifteen (15) east, to the northwest corner of section six (6), township four (4) south, range fifteen (15) east; thence south along the west line of townships four (4) and five (5) south, range fifteen (15) east; to the first standard parallel south; thence west along the first standard parallel south to a point which, when surveyed, will be the northwest corner of township six (6) south, range fourteen (14) east; thence south along the west line of township six (6) and seven (7) south, range fourteen (14) east, to a point which, when surveyed, will be the southwest corner of section thirty-one (31), township seven (7) south, range fourteen (14) east; thence west along the line dividing townships seven (7) and eight (8) south to the place of beginning. The county seat is Big Timber, Montana.

History: County created March 5, 1895, L. 1895, pp. 54-58; Sec. 4134, Pol. C. 1895; Sec. 2832, Rev. C. 1907; Stillwater county created from part of, Ch. 112, L. 1911; part of Stillwater added to and part added to Stillwater county, Ch. 74, L. 1915;

Wheatland county created, including part of, Ch. 55, L. 1917; portion detached by creation Golden Valley county, Oct. 4, 1920; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4351, R. C. M. 1921.

4352. TETON COUNTY. Commencing at the intersection of the head waters of the north fork of the Sun river with the summit of the main range of the Rocky mountains; and thence southeasterly meandering and following the center of the channel of the north fork of the Sun

river to Sun river; thence meandering down the center of the channel of Sun river to the line dividing ranges two (2) and three (3) west; thence north to the southwest corner of township twenty-two (22) north, range two (2) west; thence east to the Montana principal meridian; thence due north along said Montana principal meridian a distance of twenty-six (26) miles, more or less, to the northeast corner of section twenty-five (25), township twenty-six (26) north, range one (1) west; thence due west along the section line to the southwest corner of section twenty-two (22), township twenty-six (26) north, range three (3) west; thence due north along the section line to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range three (3) west; thence due west along the township line three (3) miles to the southwest corner of section thirty-one (31), township twenty-seven (27) north, range three (3) west; thence due north along the township line three (3) miles to the southwest corner of section eighteen (18), township twenty-seven (27) north, range three (3) west; thence due west along the section line to the southwest corner of section eighteen (18), township twenty-seven (27) north, range four (4) west, a distance of six (6) miles; thence due north along the line between ranges four (4) and five (5) west, a distance of three (3) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range four (4) west; thence due west along the line between township twenty-seven (27) north and twenty-eight (28) north, to the point where such line, if extended, would intersect the summit of the main range of the Rocky mountains; thence in a southerly direction following the summit of the main range of the Rocky mountains to the place of beginning. The county seat is Choteau, Montana.

History: County created March 1, 1893, L. 1893, p. 205; Sec. 4127, Pol. C. 1895; Sec. 2825, Rev. C. 1907; Toole county created, May 7, 1914, from portion of Teton; Glacier county created April 1, 1919, Ch. 21, L. 1919, from portion of Teton; Pondera county created April 1, 1919, Ch. 22,

L. 1919, from portion of Teton; boundaries defined by Ch. 205, L. 1921; boundary line with Chouteau changed and portion added to Teton by Ch. 174, L. 1921, effective March 5, 1921; re-en. Sec. 4352, R. C. M. 1921.

See Secs. 4362 to 4368.

4353. TOOLE COUNTY. Beginning at a point on the international boundary line where it intersects with the line between ranges three (3) and four (4) east; thence west about forty-two (42) miles along said international boundary line to the northwest corner of section six (6), township thirty-seven (37) north, range four (4) west; thence south about thirty-six (36) and one-half ($\frac{1}{2}$) miles along the range line between ranges four (4) and five (5) west, to the center of Marias river; thence following the center of said stream in a southeasterly direction to its intersection with the section line between sections fifteen (15) and sixteen (16), township thirty-one (31) north, range three (3) west; thence south about three (3) miles to the southwest corner of section thirty-four (34), township thirty-one (31) north, range three (3) west; thence east about nine (9) miles, to the northwest corner of section six (6), township thirty (30) north, range one (1) west; thence south about three (3) miles to the southwest corner of section eighteen (18), township thirty (30) north, range one (1) west; thence east about six (6) miles to the southeast corner of section thirteen (13), township thirty (30) north, range one (1) west; thence south about nine (9) miles to the southwest corner of

section thirty-one (31), township twenty-nine (29) north, range one (1) east; thence east about eighteen (18) miles to the southeast corner of section thirty-six (36), township twenty-nine (29), north, range three (3) east; thence north about forty-eight (48) miles to the northeast corner of section one (1), township thirty-six (36) north, range three (3) east; thence east to the southeast corner of section thirty-six (36), township thirty-seven (37) north, range three (3) east; thence north along the line between ranges three (3) and four (4) east, to the place of beginning. The county seat is Shelby, Montana.

History: County created by petition and election, out of Teton and Hill counties, effective May 7, 1914; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4353, R. C. M. 1921.

4354. TREASURE COUNTY. Beginning at the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east; thence east along the north line of township eight (8) north, to the northeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence south along the section line to the southeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence east to the intersection of the south boundary line of section one (1) with the range line between ranges thirty-six (36) and thirty-seven (37) east; thence south along the range line between ranges thirty-six (36) and thirty-seven (37) east, to the intersection of the north township line of township seven (7) north; thence east along the township line of township seven (7) north, to the intersection with the range line between ranges thirty-seven (37) and thirty-eight (38) east; thence south along the line between ranges thirty-seven (37) and thirty-eight (38) east, to the center of the main channel of the Yellowstone river; thence in a southeasterly course along the main channel of the Yellowstone river, to the east line of section six (6), township six (6) north, range thirty-eight (38) east; thence due south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-one (31), of townships six (6) and five (5) north, range thirty-eight (38) east, to the southeast corner of section thirty-one (31), township five (5) north, range thirty-eight (38) east; thence east along the north line of township four (4) north, range thirty-eight (38) east, to the northeast corner thereof; thence south to the southeast corner of section thirty-six (36), township two (2) north, range thirty-eight (38) east; thence west to the southwest corner of township two (2) north, range thirty-eight (38) east; thence north to the southwest corner of section eighteen (18), township two (2) north, range thirty-eight (38) east; thence west along the south line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), to the southwest corner of section eighteen (18), township two (2) north, range thirty-seven (37) east; thence north along the range line to the southwest corner of section thirty-one (31), township three (3) north, range thirty-seven (37) east; thence west along the south line of township three (3) north, range thirty-six (36) east, and township three (3) north, range thirty-five (35) east, to the southwest corner of said township three (3) north, range thirty-five (35) east; thence north along the range line to the southwest corner of section thirty-one (31), township four (4) north,

range thirty-five (35) east; thence west along the north line of the township three (3) north, range thirty-four (34) east, to the center of the Big Horn river; thence in a northeasterly direction along the center of the Big Horn river to the point of confluence of the Yellowstone and Big Horn rivers in township five (5) north, range thirty-four (34) east; running thence along the west line of section twenty-two (22), township five (5) north, range thirty-four (34) east, to the northwest corner of said section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-one (21); thence north one (1) mile to the northeast corner of section seventeen (17); thence west one (1) mile to the northwest corner of section seventeen (17); thence north two (2) miles to the northeast corner of section six (6), township five (5) north, range thirty-four (34) east; thence west one (1) mile to the southeast corner of section thirty-six (36), township six (6) north, range thirty-three (33) east; thence north along the range line two (2) miles to the northeast corner of section twenty-five (25); thence west one (1) mile to the northwest corner of section twenty-five (25); thence north one (1) mile to the northeast corner of section twenty-three (23); thence west one (1) mile to the northwest corner of section twenty-three (23); thence north two (2) miles to the northeast corner of section ten (10); thence west one (1) mile to the northwest corner of section ten (10); thence north one (1) mile to the northeast corner of section four (4), township six (6) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-three (33), township seven (7) north, range thirty-three (33) east; thence north three (3) miles to the northeast corner of section twenty (20); thence west one (1) mile to the northwest corner of section twenty (20); thence north one (1) mile to the northeast corner of section eighteen (18); thence west one (1) mile to the southwest corner of section seven (7); thence north along the range line two (2) miles to the northwest corner of section six (6), township seven (7) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-six (36), township eight (8) north, range thirty-two (32) east; thence north one (1) mile to the northwest corner of section thirty-six (36); thence west one (1) mile to the southwest corner of section twenty-six (26); thence north two (2) miles to the northeast corner of section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-two (22); thence north two (2) miles to the northeast corner of section nine (9); thence west one (1) mile to the northwest corner of section nine (9); thence north along the west side of section four (4), to the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east, to the place of beginning. The county seat is Hysham, Montana.

History: County created by Ch. 5, L. 1919, effective April 1, 1919, from portion of Rosebud county; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4354, R. C. M. 1921.

4355. VALLEY COUNTY. Commencing at a point where the range line between ranges thirty-four (34) and thirty-five (35) east, of the Montana meridian joins the international boundary line between the United States and Canada; thence running south about thirty (30) miles along said range line, observing the offsets and corrections to a point where said

range line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east along said township line about three-fourths ($\frac{3}{4}$) of a mile to a point on said township line where said line intersects the section line between sections four (4) and five (5), in township thirty-two (32) north, of range thirty-five (35) east; thence south about four and one-half ($4\frac{1}{2}$) miles on the section line to a point where said section line intersects the center of the channel of Milk river; thence westerly about three (3) miles along the center of the channel of Milk river to a point where the same intersects the section line between sections twenty-three (23) and twenty-four (24), in township thirty-two (32) north, range thirty-four (34) east; thence south about two (2) miles along the section line to a point where said section line intersects the township line between townships thirty-one (31) and thirty-two (32) north; thence west about two (2) miles along said township line to the section corner common to sections three (3) and four (4), in township thirty-one (31) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships thirty (30) and thirty-one (31) north; thence east about two (2) miles on said township line to the northwest corner of section one (1), township thirty (30) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships twenty-nine (29) and thirty (30) north; thence west about five (5) miles along said township line to a point where said township line intersects the range line between ranges thirty-three (33) and thirty-four (34) east; thence south about forty-three (43) miles along said range line, observing the offsets and corrections, to a point where said range line intersects the center of the channel of the Missouri river; thence in an easterly direction following the center of the channel of the Missouri river to its intersection with the line dividing ranges forty-five (45) and forty-six (46) east; thence running north on the line dividing ranges forty-five (45) and forty-six (46) east, observing offsets and corrections to the eighth standard parallel north; thence west along said eighth standard parallel north between townships thirty-two (32) and thirty-three (33) north, to the southwest corner of township thirty-three (33) north, range forty-four (44) east; thence north along the range line between ranges forty-three (43) and forty-four (44) east, a distance of about eighteen (18) miles, to the township line between townships thirty-five (35) and thirty-six (36) north; thence west along said township line, a distance of about six (6) miles, to the range line between ranges forty-two (42) and forty-three (43) east; thence northerly along said range line, observing the offsets and corrections thereof, a distance of about twelve (12) miles, to the northern boundary line of the state of Montana; thence west along said boundary line, a distance of about forty-eight (48) miles, to the place of beginning. The county seat is Glasgow, Montana.

History: County created by act of Feb. 6, 1893, L. 1893, p. 202, effective March 1, 1893; Sec. 4125, Pol. C. 1895; Sec. 2823, Rev. C. 1907; Sheridan county detached March 24, 1913; Phillips county created

from portion of Valley, Feb. 5, 1915; Daniels county created from portion of Valley, Aug. 30, 1920; boundaries defined by. Ch. 205, L. 1921; re-en. Sec. 4355, R. C. M. 1921.

4356. WHEATLAND COUNTY. Beginning at the point where the boundary line between ranges eleven (11) and twelve (12) east, intersects the summit of the Little Belt mountains; thence south along the said boundary line between the said ranges eleven (11) and twelve (12), to the southwest corner of township nine (9) north, range twelve (12) east; thence west along the second standard parallel north, to the northwest corner of township eight (8) north, range twelve (12) east; thence south along the boundary line between said ranges eleven (11) and twelve (12), to the southwest corner of township six (6) north, range twelve (12) east; thence east along the line between townships five (5) and six (6) north, to the southeast corner of township six (6) north, range eighteen (18) east; thence north along the line between ranges eighteen (18) and nineteen (19) east, to the northeast corner of township eight (8) north, range eighteen (18) east; thence east along the second standard parallel north to the southeast corner of township nine (9) north, range eighteen (18) east; thence north along the line between ranges eighteen (18) and nineteen (19) east, to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), in townships eleven (11) north, range eighteen (18) east, eleven (11) north, range seventeen (17) east, and eleven (11) north, range sixteen (16) east, to a point where said section line, extended, intersects the summit of the divide between the Musselshell and Missouri rivers; thence following the summit of said divide in a westerly direction to the place of beginning. The county seat is Harlowton, Montana.

History: County created April 1, 1917, Ch. 55, L. 1917, from portions of Meagher and Sweet Grass; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4356, R. C. M. 1921.

4357. WIBAUX COUNTY. Beginning at the point of intersection of the center of the channel of the Yellowstone river with a line drawn east and west through the center of section fifteen (15) of township eighteen (18) north, range fifty-seven (57) east; thence east through the center of said section to a point of intersection with the east line of said section; thence south one-half ($\frac{1}{2}$) mile along the east line of the said section fifteen (15), township eighteen (18) north, range fifty-seven (57) east, to the southeast corner of said section; thence east one-half ($\frac{1}{2}$) mile along the south line of section fourteen (14), township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-three (23), township eighteen (18) north, range fifty-seven (57) east; thence east one-half ($\frac{1}{2}$) mile to a point of intersection with the east line of said section twenty-three (23); thence south one-half ($\frac{1}{2}$) mile along the east line of said section twenty-three (23), to the southeast corner of said section twenty-three (23); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-four (24), of township eighteen (18) north, range fifty-seven (57) east; thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-five (25), township eighteen (18) north, range fifty-seven (57) east; thence one-half ($\frac{1}{2}$) mile east to the east line of said section twenty-five (25); thence south one (1) mile along the west line of sections thirty (30) and thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$)

mile to the center of section thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence south one (1) mile to the center of section six (6), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of said section six (6); thence south one-half ($\frac{1}{2}$) mile along the east line of said section six (6); thence east one-half ($\frac{1}{2}$) mile along the south line of section five (5), township seventeen (17) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile to the center of section eight (8), township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the east line of said section eight (8); thence south two (2) miles along the east line of sections eight (8), seventeen (17), and twenty (20), all in township seventeen (17) north, range fifty-eight (58) east; thence east one-half ($\frac{1}{2}$) mile to the center of section twenty-one (21), township seventeen (17) north, range fifty-eight (58) east; thence south one and one-half ($1\frac{1}{2}$) miles through the center of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east; to the south line of said section twenty-eight (28); thence east one-half ($\frac{1}{2}$) mile along the south line of section twenty-eight (28), township (17) north, range fifty-eight (58) east, to the southeast corner of said section twenty-eight (28); thence south one (1) mile along the east line of section thirty-three (33), township seventeen (17) north, range fifty-eight (58) east, to the southeast corner of said section thirty-three (33); thence east and along the north line of section one (1), township sixteen (16) north, range fifty-eight (58) east; to the quarter corner on the north line of the said section one (1); thence south three (3) miles through the centers of sections one (1), twelve (12), and thirteen (13), all in township sixteen (16) north, range fifty-eight (58) east, to the south line of said section thirteen (13); thence east one-half ($\frac{1}{2}$) mile along the south line of said section thirteen (13), township sixteen (16) north, range fifty-eight (58) east, to the southeast corner of said section thirteen (13); thence south six and one-half ($6\frac{1}{2}$) miles along the range line between ranges fifty-eight (58) and fifty-nine (59), to the quarter corner on the east line of section twenty-four (24), township fifteen (15) north, range fifty-eight (58) east; thence west one (1) mile through the center of said section twenty-four (24) to the west line of said section twenty-four (24); thence south two and one-half ($2\frac{1}{2}$) miles along the east line of sections twenty-three (23), twenty-six (26), and thirty-five (35), all in township fifteen (15) north, range fifty-eight (58) east, to the southeast corner of said section thirty-five (35); thence west and along the township line one-half ($\frac{1}{2}$) mile to the quarter corner on the north line of section two (2), township fourteen (14) north, range fifty-eight (58) east; thence south one (1) mile through the center of said section two (2), to the south line of said section two (2); thence west and along the south line of said section two (2), one-half ($\frac{1}{2}$) mile to the southwest corner of said section two (2); thence south one (1) mile and along the east line of section ten (10), township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of said section ten (10); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section ten (10), to the quarter corner on the south line of said section ten (10); thence south

one (1) mile through the center of section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the south line of the said section fifteen (15); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the southwest corner of said section fifteen (15); thence south one (1) mile along the west line of section twenty-two (22), of township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of section twenty-one (21), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile along the south line of said section twenty-one (21); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence west one-half ($\frac{1}{2}$) mile to the west line of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence south one-half ($\frac{1}{2}$) mile along the west line of said section twenty-eight (28) to the southwest corner of said section twenty-eight (28); thence west one-half ($\frac{1}{2}$) mile and along the north line of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the quarter corner of the north line of said section thirty-two (32); thence south one (1) mile through the center of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the south line of said section thirty-two (32); thence west one-half ($\frac{1}{2}$) mile and along the south line of said section thirty-two (32), to the southwest corner of said section thirty-two (32); thence south one (1) mile and along the east line of section six (6), township thirteen (13) north, range fifty-eight (58) east, to the southeast corner of said section six (6); thence west one (1) mile and along the south line of section six (6), to the southwest corner of the said section six (6); thence south one (1) mile and along the east line of section twelve (12), township thirteen (13) north, range fifty-seven (57) east, to the southeast corner of said section twelve (12); thence west one (1) mile and along the south line of said section twelve (12), to the southwest corner of said section twelve (12); thence south one-half ($\frac{1}{2}$) mile and along the east line of section fourteen (14), township thirteen (13) north, range fifty-seven (57) east; to the quarter corner on the east line of the said section fourteen (14); thence west one-half ($\frac{1}{2}$) mile to the center of the said section fourteen (14); thence south one-half ($\frac{1}{2}$) mile to a point of intersection with the south line of said section fourteen (14); thence at right angles west one (1) mile along the south line of sections fourteen (14) and fifteen (15), all in township thirteen (13) north, range fifty-seven (57) east; to the quarter corner on the south line of said section fifteen (15); thence south one-half ($\frac{1}{2}$) mile to the center of section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east; thence west one-half ($\frac{1}{2}$) mile to a point on the west line of said section twenty-two (22); thence south one-half ($\frac{1}{2}$) mile along the west line of the said section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east, to the southwest corner of said section twenty-two (22); thence west along the south line of sections twenty-one (21), twenty (20), and nineteen (19), township thirteen (13) north, range fifty-seven (57) east, and along the north line of sections twenty-five

(25) and twenty-six (26), township thirteen (13) north, range fifty-six (56) east, to the northwest corner of section twenty-six (26), township thirteen (13) north, range fifty-six (56) east; thence south two (2) miles along the west line of sections twenty-six (26) and thirty-five (35), to the southwest corner of said section thirty-five (35), township thirteen (13) north, range fifty-six (56) east. Thence west along the north line of township twelve (12) north, range fifty-seven (57) east, to the northwest corner of said township; thence at right angles south ten (10) miles along the dividing line between ranges fifty-six (56) and fifty-seven (57), to the southwest corner of section nineteen (19), township eleven (11) north, range fifty-seven (57) east; thence nine (9) miles along the section line to the northwest corner of section twenty-seven (27), township eleven (11) north, range fifty-eight (58) east; thence one (1) mile south along the west line of said section twenty-seven (27), to the southwest corner of said section twenty-seven (27); thence east along the section line to the southwest corner of section thirty (30), township eleven (11) north, range fifty-nine (59) east; thence south along the line between ranges fifty-eight (58) and fifty-nine (59) east, to the southwest corner of section six (6), township ten (10) north, range fifty-nine (59) east; thence east along the section line to the point where the south line of section four (4), township ten (10) north, range sixty-one (61) east, intersects the Montana-North Dakota boundary line; thence north along the Montana-North Dakota boundary line to its intersection with a line dividing the north from the south half of township nineteen (19) north, range sixty (60) east; thence west along the section line to the southwest corner of section eighteen (18), township nineteen (19) north, range sixty (60) east; thence south along the line between ranges fifty-nine (59) and sixty (60) east, to the southwest corner of section thirty-one (31), township nineteen (19) north, range sixty (60) east; thence west along the line between ranges eighteen (18) and nineteen (19) north, to an intersection with the center of the Yellowstone river; thence southwesterly, following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Wibaux, Montana.

History: County created by petition and election, effective Aug. 17, 1914, from portions of Dawson and Fallon counties; conflict in northern boundary with Richland; northern boundary fixed by Ch. 24, L. 1915, effective Feb. 19, 1915; boun-

daries extended, Sec. 2, Ch. 139, L. 1917; boundary line between Wibaux and Fallon counties changed and established, Ch. 185, L. 1919; boundaries defined by Ch. 205, L. 1921; re-en. Sec. 4357, R. C. M. 1921.

4358. YELLOWSTONE COUNTY. Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), in township two (2) south, range twenty-four (24) east, intersects the said river; thence south along the west line of section twenty-one (21), and the west line of sections twenty-eight (28) and thirty-three (33), in said township, to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point where it is intersected by the west line of section eight (8), in township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8) and the west line of sections seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32) of said township, to the southwest corner of section

thirty-two (32), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east, to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east to the northeast corner of section twenty-five (25), township four (4) south, range twenty-six (26) east; thence south to the southwest corner of section nineteen (19), township four (4) south, range twenty-seven (27) east; thence east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-seven (27) east; thence north to the northeast corner of section thirteen (13), township four (4) south, range twenty-seven (27) east; thence east to the southwest corner of section seven (7), township four (4) south, range twenty-nine (29) east; thence north to the northwest corner of section six (6), township four (4) south, range twenty-nine (29) east; thence east to the northwest corner of section six (6), township four (4) south, range thirty (30) east; thence north on the line between ranges twenty-nine (29) and thirty (30) east, to the northwest corner of section six (6), township one (1) south, range thirty (30) east; thence east to the southwest corner of section thirty-one (31), township one (1) north, range thirty (30) east; thence north on the line between ranges twenty-nine (29) and thirty (30) east, to the northwest corner of section thirty (30), township two (2) north, range thirty (30) east; thence east to the northwest corner of section twenty-eight (28), township two (2) north, range thirty-one (31) east; thence north to the northwest corner of section sixteen (16), township two (2) north, range thirty-one (31), east; thence east to the northwest corner of section fourteen (14), township two (2) north, range thirty-one (31) east; thence north to the northwest corner of section two (2), township two (2) north, range thirty-one (31) east; thence east to the northwest corner of section six (6), township two (2) north, range thirty-two (32) east; thence north to the northwest corner of section thirty (30), township three (3) north, range thirty-two (32) east; thence east along the north line of sections thirty (30), twenty-nine (29), twenty-eight (28), twenty-seven (27), twenty-six (26), and twenty-five (25), township three (3) north, range thirty-two (32) east, to the southwest corner of section nineteen (19), township three (3) north, range thirty-three (33) east; thence north along the line between ranges thirty-two (32) and thirty-three (33) east, to the northwest corner of section six (6), township three (3) north, range thirty-three (33) east; thence east along the line between township three (3) and four (4) north, to the center of the channel of the Big Horn river; thence in a northeasterly direction along the center of the Big Horn river to the point of confluence of the Yellowstone and Big Horn rivers in township five (5) north, range thirty-four (34) east; running thence along the west line of section twenty-two (22), township five (5) north, range thirty-four (34) east, to the northwest corner of said section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-one (21); thence north one (1) mile to the northeast corner of section seventeen (17); thence west one (1) mile to the northwest corner of section seventeen (17); thence north two

(2) miles to the northeast corner of section six (6), township five (5) north, range thirty-four (34) east; thence west one (1) mile to the southeast corner of section thirty-six (36), township six (6) north, range thirty-three (33) east; thence north along the range line two (2) miles to the northeast corner of section twenty-five (25); thence west one (1) mile to the northwest corner of section twenty-five (25); thence north one (1) mile to the northeast corner of section twenty-three (23); thence west one (1) mile to the northwest corner of section twenty-three (23); thence north two (2) miles to the northeast corner of section ten (10); thence west one (1) mile to the northwest corner of section ten (10); thence north one (1) mile to the northeast corner of section four (4), township six (6) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-three (33), township seven (7) north, range thirty-three (33) east; thence north three (3) miles to the northeast corner of section twenty (20); thence west one (1) mile to the northwest corner of section twenty (20); thence north one (1) mile to the northeast corner of section eighteen (18); thence west one (1) mile to the southwest corner of section seven (7); thence north along the range line two (2) miles to the northwest corner of section six (6), township seven (7) north, range thirty-three (33) east; thence west one mile to the southwest corner of section thirty-six (36), township eight (8) north, range thirty-two (32) east; thence north one (1) mile to the northwest corner of section thirty-six (36); thence west one (1) mile to the southwest corner of section twenty-six (26); thence north two (2) miles to the northeast corner of section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-two (22); thence north two (2) miles to the northeast corner of section nine (9); thence west one (1) mile to the northwest corner of section nine (9); thence north along the west side of section four (4) to the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east; thence west along the second standard parallel north to the southeast corner of lot four (4), in section five (5); thence north to the northeast corner of lot one (1), in section five (5); thence west to the northwest corner of section six (6), township eight (8) north, range thirty-two (32) east; thence south on the line between ranges thirty-one (31) and thirty-two (32) east, to the southwest corner of section thirty-one (31), township eight (8) north, range thirty-two (32) east; thence west to the northeast corner of section two (2), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section two (2); thence west to the northeast corner of section ten (10), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section ten (10); thence west to the northeast corner of section sixteen (16), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section sixteen (16); thence west to the northeast corner of section twenty (20), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section twenty (20); thence west to the southwest corner of said section twenty (20); thence south two (2) miles to the southeast corner of section thirty-one (31), township seven (7) north, range thirty (30) east, thence

west to the northeast corner of township six (6) north, range twenty-nine (29) east; thence south to the southeast corner of section thirteen (13), township six (6) north, range twenty-nine (29) east; thence west to the northeast corner of section twenty-two (22), township six (6) north, range twenty-seven (27) east; thence south to the southeast corner of said section twenty-two (22); thence west to the southeast corner of section twenty (20), township six (6) north, range twenty-seven (27) east; thence south to the southeast corner of section twenty-nine (29), township six (6) north, range twenty-seven (27) east; thence west to the southeast corner of section twenty-five (25), township six (6) north, range twenty-six (26) east; thence south to the southeast corner of township five (5) north, range twenty-six (26) east; thence west along the first standard parallel north to the northwest corner of section six (6), township four (4) north, range twenty-three (23) east; thence south along the east line of townships three (3) and four (4) north, range twenty-two (22) east, to the southeast corner of township three (3) north, range twenty-two (22) east; thence east along the north line of section six (6), township two (2) north, range twenty-three (23) east, to the northeast corner of said section six (6); thence running south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-one (31), of township two (2) north, range twenty-three (23) east, and one (1) north, range twenty-three (23) east, to the base line; thence west along the base line to the northeast corner of section five (5), township one (1) south, range twenty-three (23) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32), of township one (1) south, range twenty-three (23) east, to the southeast corner of said section thirty-two (32); thence south along the east line of section five (5), to the northwest corner of section nine (9), township two (2) south, range twenty-three (23) east; thence east along the north line of said section nine (9), to the northeast corner thereof; thence south along the east line of sections nine (9) and sixteen (16), township two (2) south, range twenty-three (23) east, to the northwest corner of section twenty-two (22), said township and range; thence east along the north line of said section twenty-two (22), to the northeast corner thereof; thence south along the east line of said section twenty-two (22), to the northwest corner of section twenty-six (26), township two (2) south, range twenty-three (23) east; thence east along the north line of said section twenty-six (26), to the northeast corner thereof, thence south along the east line of sections twenty-six (26) and thirty-five (35), to an intersection with the center of the channel of the Yellowstone river; thence in an easterly direction, following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Billings, Montana.

History: County created Feb. 26, 1883, L. 1883, p. 119; extended to include part of Crow Indian reservation, March 5, 1885, L. 1885, p. 74; Sec. 742, 5th Div. Comp. Stat. 1887; boundaries extended March 4, 1891, L. 1891, p. 223; Secs. 4119, 4135, Pol. C. 1895; Carbon county created from part of, March 4, 1895, L. 1895, pp. 49-54; Sweet Grass county created, includ-

ing part of, March 5, 1895, L. 1895, pp. 54-58; part of Meagher added to by Sec. 8, supra; boundaries extended to include Crow Indian reservation W. of Big Horn river, March 5, 1897, L. 1897, p. 55, Secs. 2807, 2808, 2809, 2833, Rev. C. 1907; Musselshell county created, including part of, Ch. 25, L. 1911; Big Horn county created, including part of, Jan. 13, 1913; Stillwater

county created, including part of, March 24, 1913; boundary line with Rosebud county changed, Ch. 159, L. 1917; boundary line between Yellowstone and Carbon fixed by Ch. 75, L. 1919; boundaries de-

fined by Ch. 205, L. 1921; re-en. Sec. 4358, R. C. M. 1921.

See also Sec. 4358.1, 4358.2, establishing the boundary line between Yellowstone and Carbon counties.

4358.1. Boundary line between Yellowstone and Carbon counties established. That the boundary line between Yellowstone county and Carbon county of the state of Montana, be, and the same is hereby established and shall hereafter be known as follows:

Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), township two (2) south, range twenty-four (24) east, intersects the said river, thence south along the west line of section twenty-one (21) and the west line of sections twenty-eight (28) and thirty-three (33) in said township to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point thereon where it is intersected by the west line of section eight (8), township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8), and the west line of sections seventeen (17) and twenty (20) of said township to the southwest corner of said section twenty (20) township three (3) south, range twenty-four (24) east; thence east along the south line of sections twenty (20) and twenty-one (21) of said township to the southeast corner of said section twenty-one (21) of township three (3) south, range twenty-four (24) east; thence south along the west line of sections twenty-seven (27) and thirty-four (34) of said township to the southwest corner of said section thirty-four (34), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east to the southeast corner of section twenty-four (24) township four (4) south, range twenty-four (24) east; thence east along the north line of sections thirty (30) and twenty-nine (29), township four (4) south, range twenty-five (25) east to an intersection with the west boundary line of the Crow Indian reservation, township four (4) south range twenty-five (25) east; this point being common to the boundary lines of Carbon county, Yellowstone county and Big Horn county.

History: En. Sec. 1, Ch. 30, L. 1925.

4358.2. Alteration of boundaries of Yellowstone and Carbon counties. The boundaries of Yellowstone county are hereby altered to conform to the boundaries of Carbon county as established by this act.

History: En. Sec. 2, Ch. 30, L. 1925.

4359. Effect of act. No county not herein mentioned, created, or changed by the present legislative assembly, or now in process of creation by petition and election shall be in any manner affected by the terms of this act.

History: En. Sec. 2, Ch. 205, L. 1921; re-en. Sec. 4359, R. C. M. 1921.

4360. Township and range designations. All township and range designations used in this act are hereby expressly declared to refer to

the Montana principal base and meridian, according to the United States government survey thereof.

History: En. Sec. 3, Ch. 205, L. 1921; re-en. Sec. 4360, R. C. M. 1921.

4361. Omitted.

4362. Change in boundary of Teton and Chouteau. The boundary line between the counties of Teton and Chouteau be and the same hereby is changed so that hereafter the said boundary between the said counties shall be as follows: Commencing at a point on the boundary line between the counties of Chouteau and Cascade where the line between ranges two and three east of the Montana meridian intersects said boundary line; thence running due north to a point where the said line between ranges two and three east of the Montana meridian intersects the boundary line between the counties of Chouteau and Pondera, and taking from the said county of Chouteau and adding to and making a part of the said county of Teton, all of the following described territory, to-wit: township twenty-three (23), twenty-four (24), and twenty-five (25), and sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) in township twenty-six (26), north of range one (1), east of the Montana meridian, and townships twenty-three (23), twenty-four (24), and twenty-five (25), and sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) of township twenty-six (26) north of range two (2), east of the Montana meridian.

History: En. Sec. 1, Ch. 174, L. 1921; re-en. Sec. 4362, R. C. M. 1921.

4363-4368. Omitted.

CHAPTER 338

REMOVAL OF COUNTY SEAT

- Section 4369. Removal of county seat—petition.
 4370. Submission to electors—who are taxpayers.
 4371. Election, notice of, how held and conducted.
 4372. Voter to vote for place he prefers.
 4373. Publication of result.
 4374. Place chosen to be county seat.
 4375. Statement of result and notice transmitted.
 4376. No second election to be held within four years.
 4377. County seat may be removed from time to time.

4369. Removal of county seat—petition. Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made. The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented to the board of county commissioners at least sixty days prior to any action

thereon being taken by the board of county commissioners, and action on said petition by the board of county commissioners must be had at a regular meeting of said board of county commissioners. Such petition must be filed with the county clerk, and the county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, and that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon. No other or additional petition than the one originally filed shall be considered by the board of county commissioners, except that at any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition; provided, that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R. C. M. 1921. Cal. Pol. C. Sec. 3976.

Operation and Effect

A board of county commissioners exercises judicial functions when it decides whether a petition for the submission of the removal of the county seat to the electors of the county is signed by sufficient number to require such submission. State ex rel. Buck v. Board of Commrs., 21 M 469, 474, 54 P 939.

The words "changing" and "removing" found in the constitution and the statute laws refer to the act of changing or removing a county seat that has been definitely located, and have no reference to a so-called temporary or provisional

county seat. State ex rel. Geiger v. Long, 43 M 401, 412, 117 P 104.

Conceding that the selection or removal of a county seat is a purely political function, that function has not been confided to judges of election or to the canvassers of the returns, but to a certain proportion of the qualified electors of the county affected; it rests with the courts to ascertain and decide whether the choice actually made by the requisite proportion of the qualified electors has been duly declared; and, if not, to declare it and make it effective. Poe v. Sheridan County, 52 M 279, 288, 157 P 185.

References

Cited or applied as section 2851, revised codes, before amendment, in State ex rel. Powers v. Dale, 47 M 227, 230, 131 P 670; Ainsworth v. McKay, 55 M 270, 271, 175 P 887.

4370. Submission to electors—who are taxpayers. If the petition is signed by sixty-five per cent. of the taxpayers of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that the term "taxpayers" used in this section shall be deemed to mean "ad valorem taxpayers," and that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the poll-books in the county clerk's office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the names of sixty-five per cent. of the tax-paying voters listed therein; and they shall make a similar comparison of the names signed to the petition with those appearing upon the listed assessment-roll of the county for the purpose of ascertaining whether the petition bears the names of sixty-five per cent. of the ad valorem tax-

payers as listed in said assessment-roll; and if such petition then shows that it has not been signed by sixty-five per cent. of the voters of the county who are ad valorem taxpayers thereof, after deducting from the said original petition the names of all persons who may have signed such original petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R. C. M. 1921. Cal. Pol. C. Sec. 3977.

Official Duty Presumed Performed.

The official duty devolving upon the commissioners is presumed to have been regularly performed; it is presumed that the board compared the names signed to the petition with the poll-books of the "last election." State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 77, 111 P 144.

Sufficiency of Petition

A petition for the removal of a county seat is sufficient if it is signed by the required number of ad valorem taxpayers of the county, provided all the persons necessary to make up such number are qualified voters. State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 78, 111 P 144.

Under this section the board of county commissioners is limited in its investigation of the sufficiency of a petition for the removal of the county seat to a comparison of the names appearing thereon with the poll-books to ascertain whether

the signers are voters, and with the assessment-roll, whether they are taxpayers, and may not, therefore, eliminate from the petition names of persons who have ceased to be legal voters or taxpayers. Ainsworth v. McKay, 55 M 270, 175 P 887.

Where a petition signed by the requisite number of ad valorem taxpayers of a county, who were qualified voters, for the change of a county seat, was submitted to the county commissioners, and was denied because it did not contain the number of taxpayers of the county required by the statute, it must be presumed that the petition was found sufficient, except for the fact that the board claimed that it should contain such number of taxpayers, which was determined to the contrary, in which case there was no discretion for the board to exercise, and mandamus was available to compel them to give legal effect to the petition. State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 78, 111 P 144.

References

Cited or applied as section 4158, political code, before amendment, in State ex rel. Buck v. Board of Commrs., 21 M 469, 475, 54 P 939.

4371. Election, notice of, how held and conducted. Notice of such election, clearly stating the object, must be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

History: En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907; re-en. Sec. 4371, R. C. M. 1921. Cal. Pol. C. Sec. 3979.

4372. Voter to vote for place he prefers. In voting on the question, each elector must vote for the place in the county which he prefers, by placing opposite the name of the place the mark X.

History: En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907; re-en. Sec. 4372, R. C. M. 1921. Cal. Pol. C. Sec. 3980.

References

Cited or applied as section 2854, revised codes, in State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 75, 111 P 144.

4373. Publication of result. When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors of the county have voted in favor of any particular

place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

History: En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R. C. M. 1921. Cal. Pol. C. Sec. 3981.

References

Cited or applied as section 2855, revised codes, in State ex rel. Stringfellow v. Board of Commrs., 42 M 62, 75, 111 P 144.

4374. Place chosen to be county seat. In the notice provided for in the next preceding section, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907; re-en. Sec. 4374, R. C. M. 1921. Cal. Pol. C. Sec. 3982.

References

Cited or applied as section 2856, revised codes, in State ex rel. Powers v. Dale, 47 M 227, 230, 131 P 670; Poe v. Sheridan County, 52 M 279, 288, 157 P 185.

4375. Statement of result and notice transmitted. Whenever any election has been held, as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by section 4374 of this code, they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907; re-en. Sec. 4375, R. C. M. 1921. Cal. Pol. C. Sec. 3983.

4376. No second election to be held within four years. When an election has been held and a majority of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter.

History: En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907; re-en. Sec. 4376, R. C. M. 1921. Cal. Pol. C. Sec. 3984.

4377. County seat may be removed from time to time. When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter.

History: En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907; re-en. Sec. 4377, R. C. M. 1921. Cal. Pol. C. Sec. 3985.

CHAPTER 339

LOCATION OF COUNTY SEATS

- Section 4378. Meeting and organization of board of commissioners on creation of new county—county clerk.
4379. Designation of temporary county seat—special election.
4380. Proceedings after petition for county seat election.
4381. Division of county into registration and polling precincts.
4382. Registration of voters.
4383. Judges of election—ballots, books, and records.
4384. Applicability of general election laws.
4385. Form of ballot.
4386. Canvass of returns—result of election.
4387. Re-election in case of failure to select county seat.
4388. Applicability of general laws to new counties and officers.
4389. Submission of question of locating permanent county seat to voters—elections.

4378. Meeting and organization of board of commissioners on creation of new county—county clerk. Whenever a county is created hereafter in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioners of such county by the act creating it, to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within fifteen days after the passage of the act creating the county, and then and there organize as a board of county commissioners by electing one of their number chairman.

The person appointed to the office of county clerk in the bill creating the county shall be notified in writing by the county commissioners, or some one of them, of the time and place of said meeting, and he must attend the meeting and act as the clerk thereof and keep a record of the proceedings. If no person is appointed to the office of county clerk by the act creating the county, the commissioners shall at such meeting select some person qualified to hold office of county clerk to act as clerk of such meeting.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R. C. M. 1921.

Operation and Effect

Prior to the passage of this measure, there was no general law by which a so-called temporary county seat could be located, changed, or removed, so that a temporary county seat, once designated, became in fact, permanent. State ex rel. Geiger v. Long, 43 M 401, 412, 117 P 104.

In this act there is no evidence of intention to require incorporation as a qualification for county seat in the use of the term "city or town." State ex rel. Powers v. Dale, 47 M 227, 231, 131 P 670.

References

Cited or applied as chapter 135, laws of 1911, in Poe v. Sheridan County, 52 M 279, 283, 157 P 185.

4379. Designation of temporary county seat—special election. Immediately after the organization of the board of county commissioners, as provided in the preceding section, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as hereinafter in this act provided. The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county, or at a special election as hereinafter provided.

In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, then each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper and said slips be inclosed in envelopes of the same size, color, and texture, and shall be deposited in a box or other suitable receptacle, and the county clerk, in the presence of said commissioners, shall draw out one of the said slips. Thereupon the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

At said first general election after the creation of the county, it shall be the duty of the board of county commissioners and county clerk to have separate official ballots printed and distributed for the use of the

electors at said election; which ballots shall be in the form and contain the same matter as the ballots provided for in section 4385 of this code, and the provisions of section 4386 of this code shall apply to and govern the manner of voting and of canvassing said ballots, and the board of county commisisoners shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of said section 4386.

Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred taxpayers, whose names appear upon the assessment-books containing the last assessment of the property situated in such new county, and whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the person signing said petition or petitions appear in the last assessment-books of his county, and also in the registration-books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R. C. M. 1921.

4380. Proceedings after petition for county seat election. Upon filing said petition or petitions, duly certified to as provided in the preceding section, with the county clerk of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board to be held within ten days after the filing of said petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of the preceding section, it shall at said meeting, by a resolution spread upon its minutes, call a special election of the qualified electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

Said election shall be held on Tuesday and not less than forty nor more than sixty days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least ten days before the election.

History: En. Sec. 3, Ch. 135, L. 1911; re-en. Sec. 4380, R. C. M. 1921.

4381. Division of county into registration and polling precincts. At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution spread upon its minutes, divide the county into registration districts and establish polling precincts in the manner provided by law. It must also, at such meeting, make an order designating the house or place within each precinct where the election shall be held. It must also at the same session of the board appoint registry agents for the several registration districts established by it, who must possess the qualifications required by law for registry agents. The county clerk must furnish the said registry agents with books, blanks, and other stationery required for the proper performance of their duties.

History: En. Sec. 4, Ch. 135, L. 1911; re-en. Sec. 4381, R. C. M. 1921.

4382. Registration of voters. The period for the registration of electors shall be between the hours of nine a. m. and nine p. m. on all legal days from nine a. m. of the fourth Monday prior to the date of said election to nine p. m. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the age of twenty-one years, and will have been a resident of Montana one year and of the territory embraced within the boundaries of the new county for a period of one hundred and eighty days on the day next preceding the day of such election, and also takes and subscribes to the oath provided in section 479, Revised Codes of Montana.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act in so far as the same do not conflict herewith.

History: En. Sec. 5, Ch. 135, L. 1911; re-en. Sec. 4382, R. C. M. 1921.

NOTE.—Section 479, above referred to, was repealed by chapter 113, laws of 1911.

4383. Judges of election—ballots, books, and records. At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county who shall act as the judges at said election. It shall be the duty of the county clerk to have printed and distributed to the judges of election the necessary ballots, the form of which shall be as provided in sections 4379, 4385, and 4387 of this code, and also supply the judges with the necessary books, records, stationery and ballot-boxes required to hold such election in the manner provided by law.

History: En. Sec. 6, Ch. 135, L. 1911; re-en. Sec. 4383, R. C. M. 1921.

4384. Applicability of general election laws. The judges appointed for said special election must qualify as required by the general election law, and the polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other

matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state.

History: En. Sec. 7, Ch. 135, L. 1911; re-en. Sec. 4384, R. C. M. 1921.

4385. Form of ballot. The form of the ballot used at such elections shall be as follows: There shall be a stub across the top of each ballot, and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall have a depth of not less than two inches. Upon the face of the stub there shall be printed in what is known as brier capitals the following instructions:

“To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located.”

The ballot below the perforated line shall be in the following form:

“For the permanent county seat of.....county my choice is”; (here insert name of county)

Provided, that any person who, from any cause, is unable to write, may have one of the judges in the presence of another judge write his choice on the ballot.

History: En. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R. C. M. 1921.

4386. Canvass of returns—result of election. When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector, and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county. The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns, and upon such canvassing of returns the town or place found to have received a majority of all votes cast on such questions shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board of county commissioners by the county clerk, and from the date of the declaration of the results of the election the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within ten days after the declaration of the result of such election, all records and county offices of the county, if elsewhere located, must be moved to and remain at the place declared the permanent county seat.

History: En. Sec. 9, Ch. 135, L. 1911; 66 M 411, 419, 214 P 74; State v. Board of County Commissioners, 83 M 540, 555, re-en. Sec. 4386, R. C. M. 1921

References

Atkinson v. Roosevelt County et al,

273 P 290.

4387. Re-election in case of failure to select county seat. If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates

for the permanent county seat. At said next general election, the county clerk shall have separate ballots in the form provided for in section 4385 of this code printed and distributed as provided by law containing the names of said candidates for the permanent county seat. On the stub of such ballots shall be printed the following instructions:

“To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for.”

The form of such ballots below the perforated line shall be as follows:

.....for the permanent county seat

.....for the permanent county seat

Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat, and the board of county commissioners must canvass the returns and declare the result, and the county seat must be located in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 135, L. 1911; re-en. Sec. 4387, R. C. M. 1921.

4388. Applicability of general laws to new counties and officers. All laws of general nature applicable to the several counties of the state of Montana and to the officers thereof, and to their powers and duties, shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this act, or the act creating the county.

History: En. Sec. 11, Ch. 135, L. 1911; re-en. Sec. 4388, R. C. M. 1921.

4389. Submission of question of locating permanent county seat to voters—elections. Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred taxpaying electors of such county, whose names appear upon the last assessment book, and also on the last registration-books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of taxpaying electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election,

but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

History: En. Sec. 12, Ch. 135, L. 1911; re-en. Sec. 4389, R. C. M. 1921.

CHAPTER 340

CREATION OF NEW COUNTIES BY PETITION AND ELECTION

- Section 4390. Creation of new counties—debts and assets prorated—minimum area and valuation.
4391. Basis of taxation upon creation of new county—terms used in law defined.
4392. Cities and towns eligible for county seat.
4393. Petition for creation of new county—attached affidavits—notice and hearing.
4394. Duty of commissioners when findings justify new county—division into township, road, and school districts—change of boundaries of election precincts—election—temporary county seat.
4395. Measures to be taken after election—officers—effect of adverse vote.
4396. Officers of new county—judicial district.
- 4396.1. State senator to be elected.
- 4396.2. Board of county commissioners to be elected.
4397. Commission appointed by governor to adjust indebtedness of old and new counties.
4398. Determination of amount of indebtedness and value of property—taxation.
4399. Compensation and expenses of commissioners.
4400. Assessment and collection of taxes.
4401. School and road funds.
4402. Records and books—furnishing and transcribing.
4403. Transfer of pending actions in district court.
4404. Publication by posting of notice.
4405. State senator and member of house of new county.
4406. Misdemeanor and malfeasance in office.
4407. Repealing and saving clause.

4390. Creation of new counties—debts and assets prorated—minimum area and valuation. New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars (\$12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars (\$10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of

all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the court house situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty-eight per centum (58%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 4393 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 4391, 4392 and 4398 of this code.

History: The first new county act was Ch. 112, L. 1911. The first four sections of this act were amended and the rest re-enacted by Ch. 133, L. 1913; Sec. 7 of the act was also amended by Ch. 135, L. 1913. All these acts were repealed and a complete new county law enacted by Ch. 139, L. 1915, which was repealed by Ch. 226, L. 1919. This section en. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R. C. M. 1921; amd. Sec. 1, Ch. 106, L. 1929.

state. *Hersey v. Neilson*, 47 M 132, 144, 131 P 30.

References

Act cited or applied as laws 1911, p. 205, before amendment, in *State ex rel. Powers v. Dale*, 47 M 227, 228, 131 P 670; *State ex rel. Downen v. District Court*, 50 M 249, 146 P 467; *State ex rel. Furnish v. Mullendore*, 53 M 109, 110, 161 P 949; *State ex rel. Stevens v. McLeish*, 59 M 527, 529, 198 P 357; *State v. Poland et al.*, 61 M 600, 604, 607, 203 P 352; *County of Hill v. County of Liberty*, 62 M 15, 16 et seq., 203 P 500; *State ex rel. Redman v. Meyers*, 65 M 124, 126 et seq., 210 P 1064; *Garry v. Martin*, 70 M 587, 590 et seq., 227 P 573; *State ex rel. Missoula Co. v. Brown et al.*, 73 M 371, 373, 236 P 548; *State ex rel. Foot v. Burr et al.*, 73 M 586, 587, 238 P 585; *State ex rel. School Dist. No. 28 v. Urton*, 76 M 458, 459, 248 P 369.

Operation and Effect

Since the enactment of statutes providing for the creation of new counties, the involuntary character of counties in this state is somewhat modified, but the change does not affect their status as political subdivisions of the state for governmental purposes; only incorporated cities and towns are municipal corporations in this

4391. Basis of taxation upon creation of new county—terms used in law defined. For the purposes of this act the assessed valuation of all property, whether included within the boundaries of a proposed new county, or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana, to-wit: By taking that percentage of the true and full value of all taxable property in any county specified by section 2000 of this code.

Whenever in this act the term "assessed valuation" or "valuation based on the last assessment roll" is used, said terms shall be construed as mean-

ing taxable valuation determined as herein provided, not the full and true valuation of property.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R. C. M. 1921.

References

State ex rel. Missoula Co. v. Brown et

al., 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr et al., 73 M 586, 587, 238 P 585; State ex rel. School Dist. No. 28 v. Urton, 76 M 458, 459, 248 P 369.

4392. Cities and towns eligible for county seat. No city, town, or village shall become the temporary or permanent county seat of any county organization under the provisions of sections 4390 to 4407 of this code, or created by an act of the legislative assembly, unless such city or town shall have been incorporated in the manner provided by law, or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder, and there be fifty qualified electors residing within the boundaries of such platted village, and the temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R. C. M. 1921.

References

State ex rel. Missoula Co. v. Brown et

al., 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr et al., 73 M 586, 587, 238 P 585; State ex rel. School Dist. No. 28 v. Urton, 76 M 458, 459, 248 P 369.

4393. Petition for creation of new county—attached affidavits—notice and hearing. Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty-eight per cent. of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of

said separate petitions shall be signed by at least fifty-eight per cent. of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.
2. A statement that no line thereof passes within fifteen miles of the court house situated at the county seat of any county proposed to be divided, except as hereinafter in this act provided.
3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.
4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed, and a statement of the surveyed area in square miles which will be in the new county after formed.
5. The name of the proposed new county.
6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors and taxpayers residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty-eight per cent. of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of county (naming the county rep-

resented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said county and county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meetings (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at at Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than forty-two per cent. of the votes cast at said election are "for the new county of (naming the proposed new county)," "No."

At the time so fixed for said hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. No petition or protest or petition for the exclusion of territory shall be considered unless the same is filed at least one day before the time fixed for the hearing, and such petition for the exclusion of territory shall contain the names of not less than fifty per cent. of the qualified electors who are resident property taxpayers of any territory to be excluded. All such territory being excluded must be in one block, and contain an area of not less than thirty-six square miles, and be totally within one county, and contiguous thereto, and the board of county commissioners may adjourn such hearing from time to time, but not for more than ten days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in said petition. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or considered which is not filed within five days after the filing of the petition for such exclusion of territory.

The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county, and the boundaries so determined by said board of county commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least fifty-eight per cent. of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented

from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty-eight per cent. of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3. Whether any line of the proposed new county passes within fifteen miles of the court-house situate at the county seat of any county proposed to be divided, except as hereinbefore provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least four million dollars, inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. Whether the area of the proposed new county will contain at least one thousand square miles of surveyed land to form such new county.

7. The class to which said proposed new county after its creation will belong, and the name of said proposed new county, as stated in such petition.

8. Whether the area embraced within the proposed new county will be reasonably compact.

On final hearing the board of commissioners, upon petition of not less than fifty per cent. of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent. of the qualified electors who are resident property taxpayers of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment-roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the

clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R. C. M. 1921.

NOTE.—Wording of this section changed to conform to amendment of section 4390 by sec. 1, ch. 106, L. 1929.

Counter Petition for Exclusion

The board of county commissioners, which is intrusted with the duty of passing upon the sufficiency of the petition required to be filed to effect the elimination of certain territory from a proposed new county, must read it in connection with the original petition for the creation of such county; and if thus, by any fair intendment, a description of the territory sought to be eliminated may be arrived at, it is the duty of the board to give the intention of the petitioners full force and effect. *State v. Board of Commrs.*, 44 M 51, 60, 61, 118 P 804.

Id. The fact that a board of county commissioners, in erroneously rejecting a petition seeking the elimination of certain territory from the area of a proposed new county as insufficient, acted in a quasi-judicial capacity is not any defense to the issuance of mandamus.

Id. A board of county commissioners, in passing upon the sufficiency of the petition, is presumed to understand the method pursued by the government in its surveys of public land, and is chargeable with knowledge of the territory included within its own county, as well as its boundaries.

Id. The petition for an elimination of certain territory from the area included within the boundaries of a proposed new county, must contain a description of the territory sought to be eliminated, and a prayer for the relief demanded. The other facts may be made to appear by evidence upon the hearing, without being specially alleged.

A valid petition describing the territory to be included within the proposed new county was the very foundation of the proceedings for the creation of a new county. While under certain circumstances the board of county commissioners was authorized to exclude territory, there was not any authority in the board to incorporate within the boundaries of a proposed new county territory which was not included in the petition praying for its creation, or to exclude territory unless a proper petition for withdrawal thereof was presented. *State ex rel. Jacobson v. Board of County Commrs.*, 47 M 531, 537, 134 P 291.

In determining whether a petition for the exclusion of territory from a county

proposed to be created was signed by 50 per cent. of the qualified electors therein, the board of county commissioners may resort to whatever competent evidence it has at hand, including the great register of voters. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 134 P 297.

A recital in the affidavit verifying a petition for the elimination of certain territory from the area included within the boundaries of a proposed new county, that fifty per cent. of the qualified electors of the territory sought to be withdrawn had signed such petition, was sufficient prima facie showing of that fact. *State v. Board of Commrs.*, 44 M 51, 68, 118 P 804. But this is not so where the petition is unaccompanied by such affidavit, in which case it may not be taken as prima facie evidence of such facts. *State ex rel. Lang v. Furnish*, 48 M 28, 38, 134 P 297.

The decision in this case is rigidly confined to counter-petitions for exclusion, and does not in terms or effect apply to original petitions for the creation of new counties. *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 167, 140 P 728. See, also, *State ex rel. Fadness v. Eie*, 53 M 138, 145, 146, 162 P 164.

A counter-petition for the exclusion of territory from a proposed new county must contain the signatures of at least fifty per cent. of the qualified electors resident in the territory sought to be excluded, and the burden is on the counter-petitioners to show that fact on the hearing. *State ex rel. Lang v. Furnish*, 48 M 28, 37, 134 P 297; *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 170, 140 P 728.

Since the statute does not require the verification of counter-petitions, and does not authorize the acceptance of it as probative, the counter-petitions, though verified, cannot be given any evidentiary value. *State v. Board of County Commrs.*, 49 M 165, 171, 140 P 728; *State ex rel. Arthurs v. Board of County Commrs.*, 44 M 51, 68, 118 P 804, explained by the above case.

A verification to a counter-petition asking for the exclusion of territory sought to be included in a proposed new county, which merely averred that each affiant believed that the counter-petition was signed by at least fifty per cent. of the qualified electors of the territory sought to be excluded, was of no probative value as to the facts alleged. *State v. Board of County Commrs.*, 49 M 165, 170, 171, 140 P 728.

In enacting this statute, it was competent for the legislature to prescribe the order in which an exclusion petition and an inclusion petition should be considered by the board, but it failed to do so. It did, however, create the board a special tribunal, and clothed it with authority to hear the petitions and determine them, and in the absence of legislative restrictions, this necessarily involved the authority to determine which of the two should be considered first. Apparently the legislature referred this question to the sound discretion of the board, and in the absence of fraud its action thereon is not subject to judicial control by mandamus. *State ex rel. Koefod v. Board of Commrs.*, 56 M 355, 360, 185 P 147.

Notice of Hearing

Held, on certiorari, that publication of notice of hearing on petitions for the creation of a new county required by this act, in certain newspapers for at least once a week for two weeks next preceding the date fixed for it, is jurisdictional, and that therefore failure of publication in one of the papers designated in the week immediately preceding the date of the hearing was fatal to jurisdiction and rendered all subsequent proceedings, including the election, invalid. *State ex rel. Stevens v. McLeish*, 59 M 527, 529, 198 P 357.

Id. Designation by the county clerk of a newspaper by the wrong name, in which to publish notice of the date of hearing of petitions for the creation of a new county, amounted to noncompliance with the statutory direction in that regard.

Id. The requirement of this act that notice of the hearing of new county petitions shall be published "at least once a week for two weeks next preceding the date fixed for such hearing" means two weeks immediately preceding the hearing.

The board of county commissioners is without jurisdiction to proceed with a hearing of a petition for the creation of a new county unless publication of the notice as required by this section has been made; if not so made and the board proceeds with the hearing, its action is void. *Garry v. Martin*, 70 M 587, 591, 227 P 573.

Id. Held, under the rule that where a notice is required to be published at least once a week for a period next preceding a certain date, the word "for" means "throughout" or "during the continuance of" the period prescribed, that the provision of this section, requiring publication of notice of hearing of a petition for the creation of a new county "at least once a week for two weeks next preceding the date fixed for such hearing" means that two full weeks' notice, fourteen days, shall be given, and that there-

fore publication made for a shorter period of time is insufficient.

One Block

The requirement that territory sought to be excluded from a proposed new county must be in one block—the word "block" implying solidity or compactness—was not met by a petition describing an irregularly shaped tract distributed over fourteen townships, the exterior boundaries of which ran back and forth, in all directions of the compass, alternately including and excluding small tracts, so threaded together as to preserve its continuity, and including those against the creation of the new county and excluding those favoring it. *Woodward v. Moulton et al.*, 57 M 414, 189 P 59.

Id. The interest of the legislature in enacting the provision that territory sought to be excluded from a proposed new county must be in one block, held to have been that a block should be mapped out, irrespective of the personnel of those residing within it, the majority of the residents thereof to determine whether, as a whole and not as individuals, they go with the new or remain with the old county.

Qualified Electors

In computing the number of signatures the petition must bear, the board must take into consideration only those who are qualified electors at the time of the signing of the petition and the number of electors who are shown to have been disqualified must be deducted from the total number residing in the proposed county. *State ex rel. Bogy v. Board of County Commrs.*, 43 M 533, 538, 117 P 1062; *State ex rel. Fadness v. Eie*, 53 M 138, 145, 162 P 164.

The expression "qualified electors," means persons who possess the necessary constitutional qualifications, and not electors whose names appear on the great register of voters. *State ex rel. Lang v. Furnish*, 48 M 28, 32, 134 P 297.

Id. The burden of establishing the number of qualified electors residing in territory sought to be excluded from a proposed new county is upon the petitioners seeking exclusion, and not upon the proponents of the new county.

Taxpayer

A "taxpayer" within the meaning of this section, which requires petitions for the creation of a new county to be verified by five resident taxpayers, is one who owns property within the county and who pays, and is subject to and liable for, a tax. *State ex rel. Woodward v. Moulton et al.*, 57 M 414, 189 P 59.

Id. Where the owner of personalty listed it and paid taxes thereon, failure of the assessor to place his name on the tax-

roll, or the fact that the property was mistakenly assessed in the name of a newspaper of which he was the owner, did not have the effect of disqualifying him as a "taxpayer" as above defined.

When Protests Must Be Filed

Under this section, petitions for the exclusion of territory and protests against the exclusion must, but protests against the creation of a new county need not, be filed at least one day before the date set for hearing to entitle them to consideration by the board of county commissioners, it being sufficient if such latter protests are filed on or before the time fixed for the hearing. *State ex rel. Faragher v. Moulton et al.*, 68 M 219, 221, 224, 216 P 804.

Withdrawal From Petition

In the absence of legislative expression to the contrary, signers of a petition may withdraw their names at any time before final action thereon; and the board of county commissioners was in error in refusing to consider withdrawals from petitions theretofore filed asking the exclusion of certain territory from a proposed new county upon the ground that the withdrawals of signatures, though filed before final action, had not been presented until after the date fixed for the hearing. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 36, 134 P 297.

Id. The matter of the creation of a new county must be determined on the case as made upon the date fixed for the hearing, save as it may be affected by subsequent withdrawals before final action taken; therefore, protests against its creation, or petitions for the exclusion of territory from within its proposed boundaries filed after the date fixed for the hearings, may not be entertained by the board of county commissioners.

Held, that the right of one who had signed a petition for the creation of a new county and then signed a withdrawal of his name therefrom, to thereafter and before the hearing withdraw from the withdrawal is not absolute, and therefore no clear legal duty being imposed upon the board of county commissioners to give effect to the withdrawal from the withdrawal, mandamus does not lie to compel it to do so. *State ex rel. Faragher v. Moulton et al.*, 68 M 219, 221, 224, 216 P 804.

References

Cited or applied as section 2, chapter 226, laws of 1919, in *State ex rel. Koefod v. Board of Commrs.*, 56 M 355, 360, 185 P 147; *County of Hill v. County of Liberty*, 62 M 15, 16 et seq., 203 P 500; *State ex rel. Missoula Co. v. Brown et al.*, 73 M 371, 373, 236 P 548; *State ex rel. School Dist. No. 28 v. Urton*, 76 M 459, 248 P 369.

4394. Duty of commissioners when findings justify new county—division into township, road, and school districts—change of boundaries of election precincts—election—temporary county seat. If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the court house situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty-eight per cent. of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty-eight per cent. of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts. Said board of county commissioners shall also, if necessary for the purpose of the election here-

inafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided, that the boundary lines of no such precinct shall extend beyond the boundary lines of the then existing county in which it is located, and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board. Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of election, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana. Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of (giving the name of the proposed new county)" "Yes," and "For the new county of (giving the name of the proposed new county)," "No," and each voter desiring to vote for the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of,," "Yes," in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of,," "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong, as determined by the board of county commissioners as herein otherwise provided. There shall also be printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within

the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot. At the special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the board of county commissioners with which is filed the said petition for the formation and establishment of such new county, and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed new county all ballots, poll list, tally lists, registers for voters' signatures, ballot-boxes, and other election supplies and equipment necessary to conduct such election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for the creation of the county, and for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the board of county commissioners of the county from which the largest area is taken by the proposed county.

The county clerk of each county from which territory is taken for the proposed new county shall, not less than five days before the date of such election, furnish to each board of election within said proposed new county, a copy of the official register for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

History: Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921.

NOTE.—Wording of this section changed to conform to sections 4390.

Operation and Effect

After an order calling an election to determine whether a new county should be created had been made and the board of county commissioners clothed with jurisdiction had adjourned sine die, it was without power to grant a rehearing. *State v. Board of County Commrs.*, 49 M 165, 172, 140 P 728.

The matter of dividing a new county into school districts being lodged in the discretion of the commissioners of the old county out of which the new one is created, a court cannot, upon finding that the discretion had been erroneously exercised, substitute its discretion and establish the boundaries so as to exclude territory which should not have been included, or hold the order valid as to the portion properly included and invalid as to the other. *State ex rel. School Dist. No. 28 v. Urton*, 76 M 458, 459, 248 P 369.

Id. Held, on mandamus, that where upon the creation of a new county the territory embraced within a school district for many years existent in one of the two old counties out of which the new one was created, was cut in two, causing it to lie partly in the new county and partly in the old, and the county commissioners charged with the duty of dividing the new county into school districts did not properly perform it but left the boundaries of the district in question as they were before the creation of the new county, the district ipso facto became a joint one, and therefore refusal of the county treasurer of the old county in which a portion of the district lay to transmit to the treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes, was wrongful.

References

State ex rel. Redman v. Meyers, 65 M 124, 126 et seq., 210 P 1064; *Garry v. Martin*, 70 M 587, 590, 227 P 573; *State ex rel. Foot v. Rogge et al.*, 80 M 1, 7, 257 P 1029.

4395. Measures to be taken after election—officers—effect of adverse vote. If, upon the canvass of the votes cast at such election, it appears that fifty-eight per cent. of the votes cast are "For the new county of.....," "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may

be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than forty-two per cent. of the votes cast at said election are "For the new county of _____," "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R. C. M. 1921.

Operation and Effect

Held, that though the legislature in the new counties act (this section) did not declare that where all the members of the board of county commissioners must be elected at the creation of a new county, none holding over as members of the board of the parent county because of their residence in the proposed new county, they shall be elected for terms of two, four and six years to comport with the intention of the people in amending section 4, article XVI of the constitution, it did declare that they should hold office until the time provided by general law

for the election of such officers, and not until the next general election, and thereby intended that when under the general law a term should not expire with the general election, the commissioner elected should hold over such general election. State ex rel. Foot v. Rogge et al., 80 M 1, 9 et seq., 257 P 1029.

Id. Chapter 106, laws of 1925, (sections 4396.1 and 4396.2 of this code), providing that county commissioners elected at a special election for the creation of new counties shall hold office until the next general election, held, in the nature of an amendment to this section, which not being retroactive, has no effect upon a special election held in 1924.

4396. Officers of new county—judicial district. At the election provided for in section 4394 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into townships, as hereinbefore in section 4394 provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as

justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 4394 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R. C. M. 1921.

Operation and Effect

In view of the provision of this section, that all officers of a county out of which a new county is to be created, residing in the proposed new county shall be deemed officers of the new county if within five days after determination on the petition for the creation of a new one

they shall indicate their intention to become officers of the new county, and the board of commissioners shall then omit providing for the election of such officers, it would seem that the proclamation for the election of officers of the new county should be made after five days from the determination on the petition. State ex rel. Foot v. Rogge et al., 80 M 1, 6, 257 P 1029.

4396.1. State senator to be elected. At the special election held for the purpose of voting on the creation of a new county, a state senator shall be elected, who will hold office until the next general election.

History: En. Sec. 1, Ch. 106, L. 1925.

4396.2. Board of county commissioners to be elected. At the special election held for the purpose of voting on the question of the creation of a new county, a board of county commissioners shall be elected, who shall hold office until the next general election.

History: En. Sec. 2, Ch. 106, L. 1925.

Operation and Effect

This section, providing that county commissioners elected at a special election for the creation of new counties, shall hold office until the next general

election, held, in the nature of an amendment to sec. 4395, which, not being retroactive, has no effect upon a special election held in 1924. State ex rel. Foot v. Rogge et al., 80 M 1, 11, 257 P 1029.

4397. Commission appointed by governor to adjust indebtedness of old and new counties. It shall be the duty of the persons elected to or continuing to hold the office of county commissioners of said new county to meet at the county seat thereof within five days after all of them shall have qualified, and upon organization of said board of county commissioners it shall notify the governor of the state of the organization of said county, and thereupon it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county, and no two of whom shall be from any one county; the three persons so appointed shall form and be a board of commissioners. Such commissioners shall, within ten days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman, and also elect a secretary who must not be a member of said commission. Thereafter such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business. Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this act, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county. It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission; and for any services so performed the sheriff shall be allowed the same fees as are allowed to him for services in civil actions; and all witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record; provided, that no witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R. C. M. 1921.

References

Cited or applied as section 6, chapter 133, laws of 1913, in *State ex rel. Furnish v. Mullendore*, 53 M 109, 111, 161 P 949.

4398. Determination of amount of indebtedness and value of property—taxation. Said board of commissioners shall immediately after its organization ascertain the costs of the election held hereunder, and apportion the same pro rata among each of the counties from which territory was taken to form such new county; shall ascertain the indebtedness of each county from which territory was taken to form the new county, as the same existed at the time when the result of the election was declared by the board of county commissioners, as hereinbefore provided, and also ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively. It shall also ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the terri-

tory of the new county which shall have been taken from the old county or counties from which said new county was formed. They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows:

“As said assessed value of the property in the old county is to the said assessed value of the property in the territory by this act to be incorporated within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county.”

Said board of commissioners shall certify forthwith to the board of county commissioners of the new county, and the old counties thereby affected, the amount constituting the due proportion of said excess payable by such new county to each of them; also the value of any property belonging to each old county at the time when said division took effect (as hereinbefore provided), which is situated in the new county. The sum of said ascertained value of said last-mentioned property added to the ascertained proportion of said excess which the new county is to pay the old county, and its proportion of the expense of said election as aforesaid, shall be an indebtedness from the new county to the old county, and the said property situated as aforesaid in the new county shall upon settlement therefor, as provided in this act, become the property of the new county; and the old county shall pay the entire indebtedness against it, and the expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof, as hereinbefore provided. The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county, in the manner and at the ratio in said section provided. If, upon the settlement between the old and the new county as herein provided for, the new county shall be found to be indebted to the old county, or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county, and said new county shall pay the same; provided, however, that such payment by said new county may be made in not more than three equal annual payments, or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county, adopted within one year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it. If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners, and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county, when the indebtedness of the

old county exceeds the value of the property in the old county. In the determination of the value of county property all buildings and their furniture, real estate, road tools, and machinery, and all steel bridges which may have been constructed and in use for a less period than ten years, shall be taken into consideration by the said commissioners.

Delinquent taxes due to the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: Sec. 7, Ch. 226, L. 1919; reen. Sec. 4398, R. C. M. 1921.

Constitutionality

In proceedings for the organization of a new county, the board of county commissioners is required to act as a quasi judicial tribunal, and this constitutes no invasion of the constitutional provisions which lodge the judicial power of the state in its courts. *State ex rel. Arthurs v. Board of County Commrs.*, 44 M 51, 71, 118 P 804; *State ex rel. Jacobson v. Board of Commrs.*, 47 M 531, 536, 134 P 291; *State ex rel. Lang v. Furnish*, 48 M 28, 33, 134 P 297.

Delinquent Taxes

Under the new counties act, providing for the apportionment of property and debts between a new and the old situated in that portion of the parent county or counties incorporated in the new county, which are delinquent upon creation of the new one or were delinquent and remain unpaid for previous years, are collectible by and belong to the new county. (See Opinion on Motion for Rehearing.) *County of Hill v. County of Liberty*, 62 M 15, 16 et seq., 203 P 500.

Id. Delinquent taxes paid on property incorporated in a new county, in the interim between the passing of the resolution by the board of commissioners of the parent county and the expiration of the ninety-day period after its filing with the secretary of state, belong to the parent and not to the new county.

Property of the County

Generally speaking, bridges are not such county property as that their value shall enter into consideration in the adjustment of the indebtedness of the old county with the new one. A bridge is to be treated as but a portion of a public highway. *State ex rel. Foster v. Ritch*, 49 M 155, 156, 157, 140 P 731.

"Property of the county" within the meaning of section 3, article XVI, constitution, under which, when a new county is created, the net indebtedness of the old county, its ratable proportion of which the new county must pay, is to be determined by deducting from its total indebtedness the value of all property of the old county, held to mean such property as a county holds and can sell. *State v. Poland et al.*, 61 M 600, 203 P 352.

Id. Held, that a partly finished bridge constructed with funds obtained by a bond issue is not such county property as it may sell, and therefore cannot be taken into consideration as county property in the adjustment of indebtedness between an old and a new county.

Since a completed and used bridge belongs to the state and therefore is not "property of the county" within the meaning of section 3, article XVI, constitution, prescribing the method by which, in the creation of a new county out of an old one, the proportion of the net indebtedness of the old county chargeable to the new one shall be ascertained, the legislature was without power to authorize the commissioners appointed to adjust the indebtedness between a new and an old county (as it did by the enactment of section 7, chapter 139, laws of 1915), to take into consideration steel bridges constructed and in use for a period of less than ten years, in determining the value of county property. *State ex rel. Missoula Co. v. Brown et al.*, 73 M 371, 373, 236 P 548.

When Mandamus Is Proper to Compel Adjustment of Indebtedness

Mandamus is the proper remedy to compel commissioners appointed to adjust county indebtedness between an old and a new county to reassemble and correctly apportion such indebtedness; the fact of their adjournment being immaterial. Such proceedings should be brought in the name of the county, and not by the board of county commissioners in their official capacity. *State ex rel. Furnish v. Mullen-dore*, 53 M 109, 116, 117, 161 P 949.

Id. Error committed by a board of commissioners appointed to adjust the indebtedness between an old and a newly created county, which is a function judicial in character, in taking bridges into consideration as county property, constitutes error within jurisdiction not correctible by certiorari, even though provision is not made for an appeal or some other mode of review of the board's action.

Held, that where the board of commissioners of a county a portion of which was thereafter included in a new county, in order to obtain favorable action by the electors of that portion on a proposed issue of road bonds, passed a resolution, amounting to a promise merely, that in the event the bonds were authorized, a certain proportion of the receipts would

be devoted to road improvement in their district, their breach of trust in thereafter failing to carry out their promise could not be remedied by writ of mandate to compel the board of adjusters of the indebtedness between the old and the new county to charge the old county with the amount the district should have received under the resolution, the new counties act (laws 1919, chap. 226) not authorizing the adjusters to take such action. *State v. Poland et al.*, 61 M 600, 203 P 352.

Where two counties out of which a third was created, made no objection to the report of the commissioners appointed to adjust the indebtedness between the counties, and with knowledge of mandamus proceedings instituted by the new county to have the board's findings reviewed, did not intervene though they were represented by their respective county attorneys who took part in the hearing, but waited until final decision in such proceeding and

until the new county had incurred expense in the issuance of bonds to pay the indebtedness due the parent counties, and then commenced proceedings to compel the board of adjustment to reassemble and correct its findings, they were guilty of laches warranting dismissal of the proceedings. *State ex rel. Cascade Co. v. Poland et al.*, 66 M 286, 291, 213 P 900.

The matter of dividing a new county into school districts being lodged in the discretion of the commissioners of the old county out of which the new one is created, a court cannot, upon finding that the discretion had been erroneously exercised, substitute its discretion and establish the boundaries so as to exclude territory which should not have been included, or hold the order valid as to the portion properly included and invalid as to the other. *State ex rel. School Dist. No. 28 v. Urton*, 76 M 458, 459, 248 P 369.

4399. Compensation and expenses of commissioners. Members of the board of commissioners provided for under this act shall receive a compensation of not to exceed eight dollars per day for every day they are actually employed under the provisions of this act, all of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county, and the amounts payable by each county shall be paid by the treasurers of the respective counties, after the same shall have been presented to and allowed by the board of county commissioners, as is provided by law for claims against any county.

History: En. Sec. 8, Ch. 226, L. 1919; re-en. Sec. 4399, R. C. M. 1921.

4400. Assessment and collection of taxes. After the creation of a new county, as herein provided, its officers shall proceed to complete all proceedings necessary for the assessment or collection of the state and county taxes for the then current year, and all acts and steps theretofore taken by the officers of the old county or counties prior to the creation of the new county shall be deemed and taken as having been performed by the officers of the new county for the benefit of the new county; and upon the creation of the new county it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of such new counties copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in such new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county, and such certified copies shall be taken and deemed as originals and original proceedings in the new county, and all proceedings therein recited shall be taken and deemed as original proceedings in the new county, and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county; and the officials of the new county are hereby author-

ized and directed to proceed thenceforth with the assessment and collection of said taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: Sec. 9, Ch. 226, L. 1919; re-en. Sec. 4400, R. C. M. 1921.

4401. School and road funds. The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certified copy of the last school census of the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: En. Sec. 10, Ch. 236, L. 1919; re-en. Sec. 4401, R. C. M. 1921.

4402. Records and books—furnishing and transcribing. The board of county commissioners of any new county formed as aforesaid must provide suitable books, and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property, or the title thereof, situated in the new county, and said records, when so transcribed and certified, as herein provided, shall have the same force and effect as such original records; the said county commissioners shall have full power and authority to contract for transcribing of records as now provided by law; provided, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration, which may affect or relate to property or persons situate within the new county, shall be by the county clerk of the old county delivered to the county clerk of the new county, and be preserved by said county clerk of the new county as permanent files of such new county; and provided, further, that the files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, or any other actions affecting real estate lying wholly in the new county shall be, by the clerk of the district court of the old county, delivered to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

History: Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1925.

4403. Transfer of pending actions in district court. All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to, or the enforcement of liens upon, or any other actions affecting real estate lying wholly in the new county shall forthwith upon the delivery of the files in said action to the clerk of the district court of the new county, as provided in section 4402, be transferred to the district court in which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

History: Sec. 12, Ch. 226, L. 1919; re-en. Sec. 4403, R. C. M. 1921; amd. Sec. 2, Ch. 75, L. 1925.

4404. Publication by posting of notice. Whenever in this act publication of any notice is provided for, and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notices in at least ten public places in such territories for the same length of time said notice was required to be published.

History: Sec. 13, Ch. 226, L. 1919; re-en. Sec. 4404, R. C. M. 1921.

4405. State senator and member of house of new county. The territory within the limits of any new county, until otherwise provided by law, shall be entitled to representation in the state senate by one state senator; and to representation in the house of representatives by one member of the house of representatives.

History: Sec. 14, Ch. 226, L. 1919; re-en. Sec. 4405, R. C. M. 1921.

4406. Misdemeanor and malfeasance in office. Any member of the board of county commissioners, or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails or refuses to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction.

History: Sec. 15, Ch. 226, L. 1919; re-en. Sec. 4406, R. C. M. 1921.

4407. Repealing and saving clause. All acts and parts of acts in conflict herewith are hereby repealed, with the exception: This act shall not apply in any cases whereby the election has been held under the act passed by the fifteenth legislative session for the creation of counties and a majority vote has been cast in favor thereof, but the provisions of this act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this act; and it is hereby made the duty of the board of county commissioners which may have ordered any election in pursuance of existing laws to immediately make an order annulling and setting aside all further proceedings in relation to such proposed new county, including an order to nullify and set aside any election order theretofore made; provided, if any order is made nullifying and setting aside any election as provided in this section, any bond which may have

been given in pursuance with the provisions of law relating to the costs of election for the creation of any proposed new county shall be deemed void, and no liability shall be incurred thereunder.

History: Sec. 16, Ch. 226, L. 1919; re-en. Sec. 4407, R. C. M. 1921.

CHAPTER 341

TRANSFER OF RECORDS OF NEW COUNTIES AND OF ACTIONS AFFECTING LAND TITLES—JURY LISTS

- Section 4408. New counties entitled to records.
 4409. County commissioners to have records transcribed.
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 4424. Time within which jury-list to be made and certified by clerks of old county.
 4425. Removal of names from jury-box of old county.
 4426. Duty of clerk of court in new county regarding jury-lists.

4408. New counties entitled to records. Any county or counties of the state of Montana that shall heretofore have been or may hereafter be formed from portions of another county, shall be entitled to have the county records affecting or relating to any and all property situate in the county segregated, transcribed from the books of the original county and made a part of the records of the county segregated.

History: En. Sec. 1, p. 217, L. 1893; **References**
 re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. Cited or applied as section 4166, political code, in State ex rel. Lambert v. Coad, 23 M 131, 139, 57 P 1092.
 2860, Rev. C. 1907; re-en. Sec. 4408, R. C. M. 1921.

4409. County commissioners to have records transcribed. It shall be the duty of the county commissioners of any county heretofore formed, or that may be hereafter formed from part of another county, to have so much of the records of the original county as relates to the property situate within the segregated county transcribed as hereinafter provided.

History: En. Sec. 2, p. 217, L. 1893; re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. 2861, Rev. C. 1907; re-en. Sec. 4409, R. C. M. 1921.

4410. Commissioners' power to contract. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situate within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. 2862, Rev. C. 1907; re-en. Sec. 4410, R. C. M. 1921.

4411. Payment for transcribing. Payment for transcribing such records shall be made by the county contracting therefor, by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. 2863, Rev. C. 1907; re-en. Sec. 4411, R. C. M. 1921.

4412. Certificate of transcript. When the transcript of such records herein provided for shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken, and it shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the said transcript shall be delivered for comparison shall certify under oath that the said transcribed records are full, complete and exact copies of the original records, and the said county clerk and recorder shall be entitled to six dollars per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: En. Sec. 5, p. 218, L. 1893; re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. 2864, Rev. C. 1907; re-en. Sec. 4412, R. C. M. 1921.

4413. Transcribed records to be filed. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, and shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: En. Sec. 6, p. 218, L. 1893; re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. 2865, Rev. C. 1907; re-en. Sec. 4413, R. C. M. 1921.

4414. Effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence, and shall have the same force and effect as certified copies of original records.

History: En. Sec. 7, p. 218, L. 1893; re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. 2866, Rev. C. 1907; re-en. Sec. 4414, R. C. M. 1921.

References

Cited or applied as section 4172, political code, in State ex rel. Lambert v. Coad, 23 M 131, 139, 57 P 1092.

4415. New counties—transfer of action affecting real estate. In all counties heretofore created out of any other county, and in all counties that may be hereafter created, wherever there has been an action or proceeding begun, affecting any real property situate within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding, requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county, wherein such real property is situated, it shall be the duty of the judge of the district court, in which said action or proceeding was originally begun, to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated; and when such an order of transfer is made,

it shall be the duty of the clerk of the district court, wherein such action or proceeding was originally instituted, to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject-matter of such action or proceeding, is situated; and said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county, and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

History: En. Sec. 1, Ch. 20, L. 1907; Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, R. C. M. 1921.

4416. Same—jurisdiction of court. Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county heretofore created, or that may be hereafter created, in accordance with the provision of this act, the district court of such new county, in which such files and papers shall have been transferred, shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein, or for such other proceedings as may be necessary in such action or proceeding, as the district court had in the county wherein such action or proceeding was originally begun.

History: En. Sec. 2, Ch. 20, L. 1907; Sec. 2868, Rev. C. 1907; re-en. Sec. 4416, R. C. M. 1921.

4417. Same—fees of clerk. The clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copy of the minutes and records entered in connection with such action or proceeding, no other fee than at the rate of twenty cents per folio for copies of minutes made by him, and fifty cents for certificate fee; the clerk of the district court of the new county, to which such files and papers may be transferred in accordance with the provisions of this act, shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: En. Sec. 3, Ch. 20, L. 1907; Sec. 2869, Rev. C. 1907; re-en. Sec. 4417, R. C. M. 1921.

4418. Transcript of records when territory detached from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town it shall be the duty of the proper officer of such county, city, or town to which said territory so detached shall be annexed, to demand from the proper officer of the county, city, or town having custody of the public records of the territory so detached, a transcript of all public records pertaining to such territory; and it shall be the duty of such officer from whom they shall be demanded to furnish such authenti-

cated transcripts of all such records in his office, which shall be paid for after they shall be so furnished by the county, city, or town to which said territory so detached shall be annexed.

History: En. Sec. 1, Ch. 36, L. 1911; re-en. Sec. 4418, R. C. M. 1921.

4419. Apportionment of indebtedness and credits where territory is detached and annexed. When any territory shall be detached from any county, city or town of this state, and the same shall be annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness, and shall receive a just share of the credits from the county, city, or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached, and the last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911; re-en. Sec. 4419, R. C. M. 1921.

4420. Collection of taxes in territory taken from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and be annexed to any other county, city, or town therein, it shall in no manner invalidate or interfere with the collection of taxes in such territory, and they shall be collected by and the returns made to the county to which said territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911; re-en. Sec. 4420, R. C. M. 1921.

4421. Transfer of records on creation new county. Any new county heretofore formed or that may hereafter be formed shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county, and such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor, and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county; and provided, further, that in the event territory is taken from one county and added to another county such plats and records covering such territory taken, shall be transferred to the enlarged county; provided, that if any portion of the cost of preparing such records, maps, plats, or charts remain unpaid, said new county or enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R. C. M. 1921.

4422. Jury-list for current year in new counties. Whenever a new county has been or may hereafter be created out of territory formerly embraced in any existing county or counties of the state, the jury-list for such new county for the current year, and until the regular jury commis-

sion for such new county shall certify for the succeeding year the new jury-list in accordance with the provisions of sections 8896 to 8901 of this code, shall be as follows:

History: En. Sec. 1, Ch. 129, L. 1919; re-en. Sec. 4422, R. C. M. 1921.

4423. Duty of clerk of court in the old county to certify jury-list to clerk of new county. The clerk of court of the county from which said new county may be segregated, or in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury-list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county. Such names shall then constitute the jury-list for such new county for the period as aforesaid.

History: En. Sec. 2, Ch. 129, L. 1919; re-en. Sec. 4423, R. C. M. 1921.

4424. Time within which jury-list to be made and certified by clerks of old county. Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable, and in any event within five days after request therefor shall be made by the clerk of the district court of the new county.

History: En. Sec. 3, Ch. 129, L. 1919; re-en. Sec. 4424, R. C. M. 1921.

4425. Removal of names from jury-box of old county. The clerk or clerks of the district court of the county or counties from which such new county has been or may hereafter be created shall, after the creation of such new county, remove from the list of jurors and jury-boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: En. Sec. 4, Ch. 129, L. 1919; re-en. Sec. 4425, R. C. M. 1921.

4426. Duty of clerk of court in new county regarding jury-lists. The clerk of court of the new county shall then file and prepare his jury-list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury-lists and boxes.

History: En. Sec. 5, Ch. 129, L. 1919; re-en. Sec. 4426, R. C. M. 1921.

CHAPTER 342

CHANGE OF NAME OF COUNTIES

- Section 4427. Name of any county may be changed, how.
4428. Petitions for change of name to be determined in district court.
4429. Petition for change of name of county—by whom signed and what to specify.
4430. Form of petition.
4431. Comparison of signatures and certificate of county clerk—time during which petition may be retained.
4432. Publication and posting of copies of petition.
4433. Hearing of petition and objections thereto—proceedings.
4434. Duty of clerk of court upon rendition of decree changing name of county.
4435. Change in name in official records, forms, blanks, etc.

- 4436. Records, writs, processes, actions, etc., to be the property and inure to benefit of county under new name.
- 4437. Vested rights and existing laws not affected by change in name.
- 4438. Assumption of indebtedness, bonds, and contracts by county under new name.
- 4439. Terms of court.
- 4440. Retention of office by county, township, and district officials—county boundaries.

4427. Name of any county may be changed, how. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title, as in this act provided.

History: En. Sec. 1, Ch. 113, L. 1917; re-en. Sec. 4427, R. C. M. 1921.

4428. Petitions for change of name to be determined in district court. Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

History: En. Sec. 2, Ch. 113, L. 1911; re-en. Sec. 4428, R. C. M. 1921.

4429. Petition for change of name of county—by whom signed and what to specify. A petition for the change of the name, designation, cognomen, appellation, or title of any county in this state must be signed by a number of the legal voters in such county equal, at least, to twenty-five per centum who are taxpayers and voters of the whole number of votes cast for the office of governor of Montana in such county, at the gubernatorial election next preceding the circulation of such petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching his name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for such change of name, and must be entitled in and addressed to the appropriate district court aforesaid.

History: En. Sec. 3, Ch. 113, L. 1917; re-en. Sec. 4429, R. C. M. 1921.

4430. Form of petition. The following shall be substantially the form of petition for any change of name of a county as in this act provided:

In the district court of the.....judicial district of the state of Montana, in and for the county of.....

Petition for the change of the

Name of County.

To the honorable district court of the.....judicial district of the state of Montana, in and for the county of.....

We, the undersigned legal voters of the county of, state of Montana, respectfully petition the honorable district court aforesaid that the name of.....county, Montana, be changed to the name of.....county, Montana.

The reasons for the proposed change of name as aforesaid, are as follows: (Here set out reasons.)

We further petition this honorable court to appoint a time for the hearing of this petition, and of such objections thereto as may be filed before such date.

Each voter whose signature is hereby affixed hereby certifies that he has personally signed this petition, and that the residence, post-office address, and voting precinct of such signer is correctly written after his signature appearing hereon.

Name	Residence.	P. O. Address.	Voting Precinct.

Numbered lines for names.

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the petition; and such petition may be filed with the clerk of the district court aforesaid, in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917; re-en. Sec. 4430, R. C. M. 1921.

4431. Comparison of signatures and certificate of county clerk—time during which petition may be retained. The county clerk of the county in which said petition shall be signed shall compare the signatures of the voters signing the same with their signatures on the registration books and blanks on file in his office for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the district court aforesaid, substantially as follows:

State of Montana, }
County of } ss.

To the honorable district court of the judicial district of the state of Montana, in and for the county of.....

I,, county clerk of the county of, hereby certify that I have compared the signatures on (number of sheets) of the petition for change of name attached hereto, with the signatures of said voters as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers) numbering (number of genuine signatures), are genuine. And I further certify that the number of genuine signatures hereto attached equals at least twenty-five per centum of the whole number of votes cast for the office of governor of Montana in said county at the gubernatorial election next preceding the circulation of this petition.

....., County Clerk.
(Seal) By.....

Deputy.....

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures or fraction thereof on the sheets presented to him, and at the expiration of such time he shall file the same with the clerk of the district court aforesaid, with his certificate attached thereto as above provided. The forms herein given are not mandatory, and, if substantially followed in any petition, it shall be sufficient disregarding clerical and merely technical errors.

History: En. Sec. 5, Ch. 113, L. 1917; re-en. Sec. 4431, R. C. M. 1921.

4432. Publication and posting of copies of petition. Upon the filing of the petition as aforesaid, the clerk of the district court, upon the receipt of the costs from any voter in the county, shall cause a copy of the same to be published for four successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the said clerk of the district court, and proofs must be made of such publication and posting before the petition can be considered, and before a date for the hearing thereon may be fixed by the court.

History: En. Sec. 6, Ch. 113, L. 1917; re-en. Sec. 4432, R. C. M. 1921.

4433. Hearing of petition and objections thereto—proceedings. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of the preceding section, and objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition, and may make an order changing the name if there appears any reason, benefit, or advantage for such change, or may dismiss the petition as to the court or judge may seem right or proper.

History: En. Sec. 7, Ch. 113, L. 1917; re-en. Sec. 4433, R. C. M. 1921.

4434. Duty of clerk of court upon rendition of decree changing name of county. Immediately upon the rendition of any decree changing the name of a county as in this act provided, the clerk of the district court of said county shall transmit, by registered mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of the state of Montana, who shall file the same and record the same in an appropriate book.

History: En. Sec. 8, Ch. 113, L. 1917; re-en. Sec. 4434, R. C. M. 1921.

4435. Change in name in official records, forms, blanks, etc. From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree; and all printed blanks, forms, and all printed matter whatsoever, and all written records of such county, shall be styled and designated with the new name; all the official records, blanks, forms, books and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as in the decree provided; but for the convenience of searchers of public records, and in order to prevent confusion with respect to land titles, or in any other respect, it shall be proper to style, designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name.	(Formerly)	Old Name County
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History: En. Sec. 9, Ch. 113, L. 1917; re-en. Sec. 4435, R. C. M. 1921.

4436. Records, writs, processes, actions, etc., to be the property and inure to benefit of county under new name. All public records and prop-

erty of the county existing under the former name shall be and become the public records and property of the county of the new name, and in all conveyances, indentures, instruments, decrees of courts, and other records, where the former name of the county occurs, said former name shall hereafter be construed to mean the new name of the county. All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name; and all bonds, undertakings, and sureties alive and in existence, and running to or standing in the former name of the county, shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name, or in any of the other courts of said county, shall continue in full force and be in existence in the said court in which they were pending, under the new name of the county; and shall not be in anywise abated or affected by the change of name.

History: En. Sec. 10, Ch. 113, L. 1917; re-en. Sec. 4436, R. C. M. 1921.

4437. Vested rights and existing laws not affected by change in name. The change of name herein provided for shall not impair or work a forfeiture or alteration of any vested rights, and all laws of a general or special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917; re-en. Sec. 4437, R. C. M. 1921.

4438. Assumption of indebtedness, bonds, and contracts by county under new name. All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name, and shall be the indebtedness and obligations of such county as theretofore; and all bonds theretofore issued by the county under its former name outstanding and unpaid at the time of the rendition of the decree shall be assumed by and become due from and paid by said county under its new name. All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree, shall be assumed and discharged by such county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917; re-en. Sec. 4438, R. C. M. 1921.

4439. Terms of court. The terms of the district court in and for said county as theretofore established by the court or a judge thereof under the former name of the county shall become the terms of said court for the county under its new name, and shall be held as stated in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917; re-en. Sec. 4439, R. C. M. 1921.

4440. Retention of office by county, township, and district officials—county boundaries. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials, and members of the legislative assembly of the county under its former name, shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name, and as such shall be

entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R. C. M. 1921.

CHAPTER 343

GENERAL POWERS AND LIMITATIONS UPON COUNTIES

Section 4441.	Every county a body corporate.
4442.	Powers, how exercised.
4443.	Name and designation.
4444.	Enumeration of powers.
4444.1.	Acquisition of land for public recreational purposes.
4444.2.	Use of land—limitation of expenditures.
4444.3.	County may contract for airport—levy of taxes.
4445.	Restriction on loaning credit.
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4447.	Limit of indebtedness.
4447.1.	Counties indebted beyond constitutional limit may operate on cash basis.
4448.	Service of process.
4449.	Witnesses and jurors, competency of.
4450.	No execution to issue.
4451.	Money illegally paid recovered.

4441. Every county a body corporate. Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.

History: En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R. C. M. 1921. Cal. Pol. C. Sec. 4000.

Operation and Effect

A county is one of the civil divisions of the state for political and judicial purposes, created by the sovereign power of the state of its own will, without the consent of the people who inhabit it. It is quasi-corporate in character, but has only such powers as are expressly provided by law or are necessarily implied by those expressed. State ex rel. Lambert v. Coad, 23 M 131, 137, 57 P 1092; Independent Publishing Co. v. County of Lewis and Clark, 30 M 83, 86, 75 P 860; Yellowstone Co. v. First Trust & Savings Bank, 46 M 439, 450, 128 P 596; Hersey v. Neilson, 47 M 132, 143, 131 P 30; Edwards v. County of Lewis and Clark, 53 M 359, 365, 165 P 297; Franzke v. Fergus County et al., 76 M 150, 245 P 962; Lewis v. Petroleum County, 92 M 563, 565, 17 P 2d 60.

While, in a strict sense, a county is not a municipal corporation, yet, in the sense that it is a body corporate with such powers only as are expressly conferred by the code and special statutes, and such as are necessarily implied from those expressed, it comes within the rules and principles applicable to such corporations.

State ex rel. Lambert v. Coad, 23 M 131, 137, 57 P 1092; Morse v. Granite County, 44 M 78, 88, 119 P 286.

A county is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 M 132, 141, 131 P 30.

Id. A county does not have any powers other than those indicated in this section.

Aside from the powers granted to counties by statute and those necessarily implied from the powers expressed, they have none, and where there is a fair and reasonable doubt as to the existence of a particular power, it must be resolved against them and the power denied. Sullivan v. Big Horn County, 66 M 45, 47, 212 P 1105.

Id. A party assuming to deal with a county on the supposition that it possesses powers which it does not cannot maintain an action against it upon its unauthorized action.

Id. A municipal corporation, such as a county, being no more than a political subdivision of the state for governmental purposes, cannot be subject to a penal liability, and therefore an action for treble

(or penal) damages for unlawful detainer does not lie.

Id. While an action for unlawful detainer in which treble damages are sought does not lie against a county, one in ejectment may be maintained against it.

“Prerogative” or its synonym “sovereignty” means the inherent power of the people; it must involve the general interest of the state at large, and though the prerogative of the state may be invoked for the protection of the rights of a county—its agent or creature—the county, in the absence of express authority granting it, does not itself possess the

power of the sovereign. *Bignell et al. v. Cummins*, 69 M 294, 299, 222 P 797.

Where a party assumes to deal with a county on the supposition that it possesses powers which it does not in fact possess, he may not recover even though he has performed his part of the contract. *Lewis v. Petroleum County*, 92 M 563, 565, 17 P 2d 60.

References

Cited or applied as section 2870, revised codes, in *State ex rel. Furnish v. Mullendore*, 53 M 109, 117, 161 P 949; *State Bank of Outlook v. Sheridan County*, 72 M 1, 6, 230 P 1097; *State v. McGraw*, 74 M 152, 155, 240 P 812.

4442. Powers, how exercised. Its powers can only be exercised by the board of county commissioners, or by agents, and officers acting under their authority, or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R. C. M. 1921. Cal. Pol. C. Sec. 4001.

Operation and Effect

The powers of a county are exercised by the commissioners, but they are not

therefore authorized to bring actions in their official capacity on behalf of the county, in the absence of a provision conferring upon them the right to do so. *State ex rel. Furnish v. Mullendore*, 53 M 109, 117, 161 P 949.

4443. Name and designation. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties; but this provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R. C. M. 1921. Cal. Pol. C. Sec. 4002.

Operation and Effect

A county by its corporate name is the proper party to bring “all actions and proceedings touching its corporate rights, property and duties”; hence, a mandamus

proceeding to compel a board of county commissioners to reapportion an indebtedness between an old county and a new one should be brought in the name of the county; the board itself is not authorized to bring such a proceeding in its own name. *State ex rel. Furnish v. Mullendore*, 53 M 109, 117, 161 P 949.

4444. Enumeration of powers. It has power:

1. To sue and be sued.
2. To purchase and hold lands within its limits.
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.
5. To levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R. C. M. 1921. Cal. Pol. C. Sec. 4003.

Operation and Effect

A party assuming to deal with a county on the supposition that it possesses powers which it does not cannot maintain an action against it upon its unauthorized action. *Sullivan v. Big Horn County*, 66 M 45, 47, 212 P 1105.

Id. A municipal corporation, such as a county, being no more than a political subdivision of the state for governmental purposes, cannot be subjected to a penal liability, and therefore an action for treble (or penal) damages for unlawful detainer does not lie.

Id. While an action for unlawful detainer in which treble damages are sought does not lie against a county, one in ejectment may be maintained against it.

A county is merely a subdivision of the state for governmental purposes, and as such is subject to legislative regulation and control; the legislature may within the limitations prescribed by the constitution, circumscribe or extend the powers

to be exercised by a county, and legislative authority to regulate or control the disposition of county property not having been limited by the constitution, it could properly declare, as it did by this section and section 4465, that such property may be sold only under the restrictions and in the manner therein indicated. *Franzke v. Fergus County et al.*, 76 M 150, 156, 245 P 962.

References

Cited or applied as section 4193, political code, with other sections, in *Greeley v. Cascade County*, 22 M 580, 587, 57 P 274; *Gregg v. Bayers*, 73 M 165, 167, 235 P 337.

4444.1 Acquisition of land for public recreational purposes. The several counties of this state are hereby authorized and empowered to acquire by purchase, grant, deed, gift, devise or condemnation, or otherwise, lands in one tract, suitable for public camping and public recreational purposes, or may lease such land tracts, each of which shall be so situated as to offer ready access to a public highway.

History: En. Sec. 1, Ch. 51, L. 1929.

4444.2. Use of land—limitation of expenditures. All tracts of land acquired under this act shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. Except as hereinafter provided, no county shall be authorized to expend to exceed two hundred fifty dollars (\$250.00) for the purpose of acquiring and equipping parks as herein provided, nor may any county thereafter expend to exceed fifty dollars (\$50.00) per year in maintenance of the same. The limitations hereinabove provided shall not apply to counties of the first, second, third, fourth and fifth classes. Any county, whatever its classification, may expend not to exceed three hundred dollars (\$300.00) per year for maintaining any park created under the terms of this act, if, at the time of such expenditure, any government civilian conservation corps camp or emergency conservation work camp, or any other camp created for recreational purposes by any federal agency, shall be established or maintained in such county.

History: En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935.

4444.3. County may contract for airport—levy of taxes. That any county of this state is hereby authorized and empowered to enter into a contract upon such terms and conditions as it may deem proper, with any incorporated city or town within the limits of said county, to equip, maintain, or improve any municipal airport or landing field owned and operated as such by said city or town, or to purchase, equip, maintain and improve jointly with any such city or town, an airport or landing field; provided, however, that the amount of money that may be so appropriated by said county shall not exceed in any one (1) year, a sum in excess of an amount equal to one-half ($\frac{1}{2}$) mill levy on the taxable value of all property for tax purposes within said county, for the year in which said appropriation is made.

History: En. Sec. 1, Ch. 36, L. 1931.

4445. Restriction on loaning credit. No county must ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to or a shareholder in any company or corporation, or a joint owner with any person, company or corporation.

History: En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907; re-en. Sec. 4445, R. C. M. 1921. Cal. Pol. C. Sec. 4004.

4446. Restriction on temporary loans. All moneys borrowed by or on behalf of any county must be used only for the purpose specified in the law authorizing the loan.

History: En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907; re-en. Sec. 4446, R. C. M. 1921. Cal. Pol. C. Sec. 4005.

4447. Limit of indebtedness. No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors thereof voting at an election to be provided by law.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R. C. M. 1921.

NOTE.—See also XIII, 5 of the state constitution.

Operation and Effect

The issuance by a county of coupon bonds to the extent of one hundred and fifty thousand dollars for the purpose of redeeming outstanding county warrants to that amount is merely a change in the form of a subsisting liability, and not the creation of a new indebtedness or liability, and is, therefore, not within the inhibi-

tion of the constitution and laws of the state which provide in effect that counties shall not incur an indebtedness or liability for any single purpose in an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county. *Hotchkiss v. Marion*, 12 M 218, 223, 224, 29 P 821; see *Edwards v. County of Lewis and Clark*, 53 M 359, 165 P 297.

References

Bennett v. Petroleum County et al., 87 M 436, 444, 288 P 1018.

4447.1. Counties indebted beyond constitutional limit may operate on cash basis. That in case the total indebtedness of a county, lawful when incurred, by reason of great diminution of taxable values exceeds the limit of five per centum (5%) provided in section 5 of article 13 of the constitution of the state of Montana, it shall be lawful for said county and it is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of said county out of the cash in the county treasury and derived from its current revenue, and under such restrictions and regulations as may be imposed by the board of county commissioners of said county by a resolution duly adopted and spread upon the minutes of said board; provided, however, that nothing herein shall restrict the right of said board to make the necessary tax levies for interest and sinking fund purposes, and provided further that nothing herein shall affect the right of any creditor of said county to pursue any remedy now given him by law to obtain payment of his claim.

History: En. Sec. 1, Ch. 93, L. 1935.

4448. Service of process. In all legal proceedings against the county, process must be served on the chairman of the board of county commissioners; and whenever an action or proceeding is commenced, it is the duty of the chairman forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at its next meeting, all the information he may have in regard to such action or proceeding.

History: En. Sec. 4197, Pol. C. 1895; re-en. Sec. 2877, Rev. C. 1907; re-en. Sec. 4448, R. C. M. 1921.

4449. Witnesses and jurors, competency of. On the trial on an action in which the county is interested, the inhabitants of such county are competent jurors, if otherwise competent and qualified according to law.

History: En. Sec. 341, 5th Div. Rev. Stat. 1879; re-en. Sec. 750, 5th Div. Comp. Stat. 1887; amd. Sec. 4198, Pol. C. 1895; re-en. Sec. 2878, Rev. C. 1907; re-en. Sec. 4449, R. C. M. 1921.

4450. No execution to issue. When a judgment is rendered against the county, or against any county officer, in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges; and when so collected, must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R. C. M. 1921.

References

Cited as section 4199, political code, in *Greeley v. Cascade County*, 22 M 580, 587, 57 P 274.

4451. Money illegally paid recovered. Whenever any board of county commissioners, without authority of law, orders any money paid as a salary, fees, or for other purposes, and such money has been actually paid, or whenever the county clerk has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners, or by the law, and the same has been paid, the county attorney of such county must institute an action in the name of the county against such person or persons to recover the money so paid, and twenty per cent. damage for the use thereof, and no order of the board of county commissioners therefor is necessary in order to maintain such action; when the money has not been paid on such orders, it is the duty of the county attorney to commence an action in the name of the county for restraining the payment of the same; and no order of the board of county commissioners therefor is necessary to maintain such action.

History: En. Sec. 4200, Pol. C. 1895; re-en. Sec. 2880, Rev. C. 1907; re-en. Sec. 4451, R. C. M. 1921.

Related sections: 4520, 4821.

CHAPTER 344

COUNTY COMMISSIONERS—ORGANIZATION, MEETINGS, AND COMPENSATION

- Section 4452. Board, how composed.
4453. Member must be elector of county.
4454. Vacancy, how filled.
4455. Bond of members of board.

- 4456. Chairman of board—administration of oaths.
- 4458. Meetings and records to be public.
- 4459. Clerk.
- 4460. Duties of clerk.
- 4461. Duties of board.
- 4462. Regular meetings—extra sessions.
- 4463. Other meetings.
- 4464. Compensation of members of board.

4452. Board, how composed. Each county must have a board of county commissioners, consisting of three members, whose term of office is six years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1933. Cal. Pol. C. Sec. 4022.

References

Cited as section 4210, political code, in *Williams v. Comms. of Broadwater Co.*, 28 M 360, 364, 72 P 755.

4453. Member must be elector of county. Each member of a board of county commissioners must be an elector of the county he represents.

History: En. Sec. 4211, Pol. C. 1895; re-en. Sec. 2882, Rev. C. 1907; re-en. Sec. 4453, R. C. M. 1921. Cal. Pol. C. Sec. 4023.

4454. Vacancy, how filled. Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921; re-en. Sec. 4454, R. C. M. 1921. Cal. Pol. C. Sec. 4026.

Held, under section 511, that refusal or neglect of an officer-elect to file his bond within the time prescribed creates a vacancy in the office, and that in the case of a county commissioner the district judge had authority, under this section upon the expiration of the thirty-day period provided for the filing of a bond, to declare the office vacant and make a prospective appointment to fill the vacancy when it did occur, to-wit, at the commencement of the new term. *State ex rel. Wallace v. Callow*, 78 M 308, 326, 254 P 187.

References

Cited as section 1, chapter 5, laws of 1913, and construed as to constitutionality, in *State ex rel. Rowe v. Kehoe*, 49 M 582, 586, 144 P 162.

Cited or applied as section 2883, revised codes, before amendment, and construed as to constitutionality, in *State ex rel. McGowan v. Sedgwick*, 46 M 187, 193, 127 P 94.

Operation and Effect

The power to fill a vacancy in the office of county commissioner is conferred by the constitution upon the district judge of the district in which the vacancy occurs and the provisions of this section, enacted in pursuance thereof, but such power is ministerial, not judicial, in character. *Certiorari* does not lie to annul an order filling a vacancy deemed by the judge to exist in that office in a newly created county because of the alleged unconstitutionality of the act under which the office was filled by election, and because the incumbent was holding two other offices regarded by him as incompatible. *State ex rel. Downen v. District Court*, 50 M 249, 251, 252, 146 P 467.

4455. Bond of members of board. Each person elected or appointed to the office of county commissioner must, before he enters upon the duties of his office, execute and file with the clerk of the district court of the county a bond, as provided in section 466 of this code. It is the duty of the district judge on the first day in each term or session of court, in open court, to examine and inquire into the sufficiency of such bond, and order a new bond if found insufficient, and if found sufficient, his approval must be entered in the minutes of the court.

History: Ap. p. Sec. 917, 5th Div. Comp. Stat. 1887; amd. Sec. 4213, Pol. C. 1895; re-en. Sec. 2884, Rev. C. 1907; re-en. Sec. 4455, R. C. M. 1921.

Operation and Effect

Held, that this section requiring before inter alia, the furnishing of an official bond by county commissioners before as-

suming office, and imposing upon the district judge the duty of examining such bond on the first day of each term of court, is not open to the construction that county commissioners may file their bonds regardless of approval, and that the judge at the next session of court

must approve them if sufficient, such a construction being inconsistent with the provisions of sections 466 to 476, having to do generally with the giving of official bonds or qualifying for county office. State ex rel. Wallace v. Callow, 78 M 308, 324 et seq., 254 P 187.

4456. Chairman of board—administration of oaths. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R. C. M. 1921. Cal. Pol. C. Sec. 4028.

4457. Repealed—Chapter 35, laws of 1929.

4458. Meetings and records to be public. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R. C. M. 1921. Cal. Pol. C. Sec. 4035.

References

Cited as section 4216, political code, in Williams v. Commrs. of Broadwater Co., 28 M 360, 364, 365, 72 P 755; Burr v. Winnett Times Publishing Co. et al., 80 M 70, 79 et seq., 258 P 242.

4459. Clerk. The county clerk is the clerk of the board of county commissioners. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R. C. M. 1921. Cal. Pol. C. Sec. 4029.

4460. Duties of clerk. The clerk of the board must:

1. Record all the proceedings of the board.
2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.
4. Sign all orders made and warrants issued by order of the board for the payment of money, and certify the same to the county treasurer.
5. Record the reports of the county treasurer of the receipts and disbursements of the county.
6. Preserve and file all accounts acted upon by the board.
7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon.
8. Record all orders levying taxes.
9. Designate upon every account allowed by the board the amount allowed, and he must deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein.
10. As often as a new township is organized, or the boundaries of any township are altered, to immediately make out and transmit to the secre-

tary of state a certified statement of the names and boundaries, and the boundaries of any township altered.

11. Perform all other duties required by law or any rule or order of the board.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Secs. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Sec. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R. C. M. 1921. Cal. Pol. C. Sec. 4030.

May Not Question Constitutionality of Statute

A ministerial officer, such as a county clerk, to whom no injury can result and to whom no violation of duty can be imputed by reason of his compliance with a statute cannot refuse to perform a duty imposed by it on the ground of its unconstitutionality, since such an officer is not liable for his official acts when acting

under process, warrants or other instruments, fair upon their face and issued from a superior tribunal or board. State ex rel. Lockwood v. Tyler, 64 M 125, 131, 208 P 1081.

Right to Question Legality of Claims Against County

The duty of the county clerk to issue warrants for claims passed upon by the board of county commissioners, being ministerial only, he is not clothed with supervisory power to either question or determine the legality of the claims, except where they are void upon their face as without the jurisdiction of the board to pass upon. State ex rel. Lockwood v. Tyler, 64 M 125, 131, 208 P 1081.

4461. Duties of board. The board of county commissioners must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.

2. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts, or relating to road supervisors and their reports and accounts, as provided in section 2604 (see note) of this code.

3. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time, and to whom granted, the amount of bond and license tax required.

4. A "Warrant Book," in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4461, R. C. M. 1921. Cal. Pol. C. Sec. 4031.

NOTE.—The reference to section 2604, supra, is obsolete, the section having been repealed. See section 1622 of this code.

Operation and Effect

This section providing that a board of county commissioners must cause a minute-book to be kept in which must be recorded all its orders, decisions, and pro-

ceedings, does not make such record the only evidence admissible to prove the action of the board nor prohibit oral testimony as to what was actually done, and, when so proved, its action has the same effect as though shown by a minute entry. State ex rel. Rankin v. Madison State Bk., 77 M 498, 503, 251 P 548.

References

Cited or applied as section 2890, revised codes, in Smith v. Zimmer, 45 M 282, 300, 125 P 420; State v. American Bank & Trust Co., 75 M 369, 375, 243 P 1093.

4462. Regular meetings—extra sessions. The board of county commissioners, except as may otherwise be required of them, may meet at the county seat of their respective counties on the first Monday of each and every month of the year, for the purpose of allowing bills and attending

to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929. Cal. Pol. C. Sec. 4032.

References

Cited or applied as section 2891, revised codes, before amendment, in *Smith v. Zimmer*, 45 M 282, 307, 125 P 420.

4463. Other meetings. Such other meetings must be held to canvass election returns, equalize taxation, and other purposes as are prescribed in this code or provided by the board.

History: En. Sec. 4221, Pol. C. 1895; re-en. Sec. 2892, Rev. C. 1907; re-en. Sec. 4463, R. C. M. 1921. Cal. Pol. C. Sec. 4033.

4464. Compensation of members of board. Each member of the board of county commissioners is entitled to eight dollars per day for each day's attendance on the sessions of the board, and ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921.

References

Cited or applied as section 2893, revised codes, in *State ex rel. Payne v. District Court*, 53 M 350, 354, 165 P 294; *State v. Story*, 53 M 573, 165 P 748.

NOTE.—For compensation of county commissioners when inspecting construction work see section 1632.

CHAPTER 345

GENERAL POWERS OF BOARDS OF COUNTY COMMISSIONERS

Section 4465.	Powers of supervision.
4465.1.	Division of county into townships, school, road and other districts.
4465.2.	Elections, powers concerning.
4465.3.	Highways, ferries and bridges.
4465.4.	Poor and indigent persons.
4465.5.	Poor farm.
4465.6.	Rooms for county purposes.
4465.7.	Obtaining property.
4465.8.	Erection of county buildings.
4465.9.	Sale of property.
4465.10.	Examination and allowance of officers accounts.
4465.11.	Accounts to be examined, settled and allowed.
4465.12.	Taxation.
4465.13.	Equalizing assessments.
4465.14.	Direction of law suits.
4465.15.	Insurance of county buildings.
4465.16.	Licenses.
4465.17.	Fixing of compensation of officers not otherwise provided for.
4465.18.	Filling vacancies in county, township and precinct offices.
4465.19.	Contract for printing and supplies.
4465.20.	Publication of proceedings, list of claims, financial statement.
4465.21.	Representing and management of county property and business.

- 4465.22. Rules and enforcement.
- 4465.23. Seal of county.
- 4465.24. Necessary acts.
- 4465.25. Borrowing money.
- 4465.26. Bonds for construction may be issued.
- 4465.27. Lease of county property.
- 4465.28. Garbage and ash collection—tax.
- 4465.29. Lease of county property for hospital purposes.
- 4466. Validation of sales made under section 4465.9.

4465. Powers of supervision. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To supervise the official conduct of all county officers, and officers of all districts and other sub-divisions of the county, charged with assessing, collecting, safe keeping, management or disbursement of the public revenues; see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary require them to renew their official bonds; to make reports and to present their books and accounts for inspection.

History: Secs. 4465-4465.29 en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931. Cal. Pol. C. Sec. 4046.

NOTE.—Sec. 4465 as it existed in the 1921 code contained all the powers of the county commissioners and had 30 subdivisions. For convenience' sake, these have been divided, and will be found as sections 4465-4465.29.

Supervise Officers

However, the board of county commissioners has general supervision and control over the officers, affairs, and finances of its county and it may be conceded that, unless authority therefor shall be found in the statutes, no other county officer may bind the county by contract, and that a person dealing with a county through one of its agents is bound to know the extent of such agent's authority, and if he enters into an unauthorized contract, he does so at his own risk. (*Pue v. Lewis and Clark County*, 75 M 207, 243 P 573). *Hicks v. Stillwater County*, 84 M 38, 42, 274 P 296.

NOTE.—Sections 4465-4465.29 were all listed as section 4465 in the revised codes of 1921, making in all 30 subdivisions to that section. The following annotations were made dealing with all the powers of county commissioners. These annotations were made with no reference to any particular subdivision of section 4465 of the 1921 code. They are placed here for convenience, but should be considered in connection with the next 29 sections, also.

General Provisions

A board of county commissioners, is one of limited powers, and must in every instance justify its action by reference to the provisions of law defining and limiting these powers. If, however, there is no question of the existence of the power to do the act proposed, and the mode of its exercise is not pointed out, the board is left free to use its own discretion in selecting the mode it shall adopt or the course it shall pursue, and the result cannot be called in question if the course pursued is reasonably well adapted to the accomplishment of the end proposed. *State ex rel. Lambert v. Coad*, 23 M 131, 137, 57 P 1092; *State ex rel. Gillett v. Cronin*, 41 M 293, 295, 109 P 144; *Morse v. Granite County*, 44 M 78, 89, 119 P 286; *Hersey v. Neilson*, 47 M 132, 145, 131 P 30.

A contract with an attorney for his services, entered into by the chairman of the board individually, is not binding on the county, since the commissioners have power to bind the county only where they act as a legal entity. *Williams v. Commrs. of Broadwater Co.*, 28 M 360, 365, 366, 72 P 755.

A contract made by a board of county commissioners, a few weeks before the expiration of its term of office, and upon the expiration of a prior contract, for county printing for the two succeeding years, is valid in the absence of fraud or bad faith in the making, and is not against public policy. *Picket Pub. Co. v. Board of County Commrs.*, 36 M 188, 194, 195, 92 P 524.

While the board of county commissioners has the power under this section to change the boundaries of a county, or to abolish a township altogether, a due regard for other provisions of the code re-

quires that its authority in this respect be limited to the extent that there must always be at least two townships in each county, and in abolishing all but one township in a county it acts in excess of its jurisdiction. *State ex rel. Gillett v. Cronin*, 41 M 293, 296, 109 P 144.

Counties and school districts are subdivisions of the state government with fixed powers and duties, and any act taken by the commissioners of the former or the trustees of the latter must be justified by the provisions of the statutes defining and limiting their powers. *State v. McGraw*, 74 M 153, 155, 240 P 812.

Where the legislature has prescribed with particularity the essential steps necessary to be taken by a county in the exercise of a power granted, the statute must be held to exclude any other mode of procedure, under the doctrine *expressio unius est exclusio alterius*. *Granzke v. Fergus County et al.*, 76 M 150, 153, 245 P 962.

The duty imposed upon the commissioners by this section is mandatory and imperative, and a failure to discharge it may be serious to them. *Moore v. Industrial Accident Fund*, 80 M 136, 139, 259 P 825.

The board of county commissioners may exercise powers not specifically granted if they are necessarily implied from those granted, and under its implied power it may contract to have work done which is necessary for the proper management of the county's business and the preservation of its property, if the law does not make it the duty of some county officer to do the work. *Arnold et al. v. Custer County et al.*, 83 M 130, 149, 269 P 396.

Id. Where by law the board of county commissioners or other county officer is required to do an act but the method of doing it is not provided, any reasonable

and suitable means may be adopted for performing it.

While the board of county commissioners is without power to enter into a contract for services the performance of which is cast upon another county official or board, it may contract with a private individual for information relative to matters of taxation to aid it in the performance of its duties as a county board of equalization, even though, incidentally, the information received may aid other officials in the performance of their duties, provided the grant of power is to be found in the statutes. *Simpson v. Silver Bow County*, 87 M 83, 93, 285 P 195.

Id. Where the board of county commissioners has a given power, granted expressly or impliedly, but no mode of exercise thereof is indicated, it may in its discretion select any appropriate mode or course of procedure.

References

Cited or applied as section 2894, revised codes, before amendment, in *State ex rel. Stuewe v. Hindson*, 44 M 429, 439, 120 P 485; *Reid v. Lincoln County*, 46 M 31, 64, 125 P 429; *State ex rel. Hillis v. Sullivan*, 48 M 320, 324, 137 P 392; *State v. Story*, 53 M 573, 581, 165 P 748; *State v. Poland et al.*, 61 M 600, 603, 203 P 352; *State v. Gowdy*, 62 M 119, 203 P 1115; *State v. District Court et al.*, 62 M 275, 278, 204 P 600; *State ex rel. Case v. Bolles et al.*, 74 M 54, 65, 238 P 586; *Riggs v. Webb*, 77 M 80, 82, 249 P 1041; *State ex rel. McMaster v. District Court*, 80 M 228, 232, 260 P 134; *State ex rel. Blair v. Kuhr*, 86 M 377, 381, 283 P 758; *Brannin v. Sweet Grass Co.*, 88 M 412, 418, 293 P 970; *State et al. v. Board of Commissioners et al.*, 89 M 37, 296 P 1; *Judith Basin Co. v. Livingston et al.*, 89 M 438, 442 et seq., 298 P 356.

4465.1. Division of county into townships, school, road and other districts. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To divide the counties into township, school, road and other districts required by law, change the same, and create others as convenience requires, by consolidation of two (2) or more townships, or otherwise.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.2. Elections, powers concerning. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To establish, abolish and change election precincts, and to appoint judges of election, canvass all election returns, declare the result, and issue certificates thereof.

History: En. Subd. 3, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.3. Highways, ferries and bridges. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To lay out, maintain, control and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law; provided, however, that they may in the exercise of a sound discretion, jointly with other counties, lay out, maintain, control, manage and improve public highways, ferries and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of county commissioners of the counties concerned, and levy taxes therefor as provided by law; and where joint highway or bridge construction projects are contemplated or necessary and the cooperation of another county, or other counties, or the state or federal government, or either or both, is desired for the construction of such projects they may enter into agreement for adjusted annual contributions over not to exceed six years, toward the cost of such projects, and they shall be authorized to place the same in their budget and levy taxes therefor as according to law.

History: En. Subd. 4, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.4. Poor and indigent persons. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax therefor per capita, not exceeding two (\$2.00) dollars and a tax on property not exceeding three-fifths ($\frac{3}{5}$) of one per cent (1%) on either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

Sick and Poor

For a decision concerning the validity of a contract entered into by the board of county commissioners for the care of the poor under former statutes, see *Lebcher v. Commrs. of Custer Co.*, 9 M 315, 23 P 713.

The board of county commissioners did not have the power to erect and maintain a detention hospital for persons affected with contagious or pestilential diseases, at the expense of the county. *Yegen v. Board of County Commrs.*, 34 M 79, 86, 85 P 740.

Held, that in enacting section 4521 et seq., relative to the care by counties of their indigent sick, poor and in-

firm, the policy of the legislature has been to impose a wide discretion in the county commissioners and that, in carrying out such a policy, their power is not limited to placing the poor in the county poorhouse, where there is one, or to contract for their maintenance, but may, if they deem it proper, extend aid in the shape of fuel, groceries, clothing or by small doles of money, at their respective places of residence. *Jones v. Cooney et al.*, 81 M 340, 346, 263 P 429.

Id. While under section 4833, R. C. M. 1921, the county auditor is made the superintendent of the poor who must care for and examine all claims that may be made upon the county for charity, he must do so under such rules and regulations as the commissioners may prescribe in their discretion.

4465.5. Poor farm. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide a farm for the support of the poor of the county, and make regulations for working the same.

History: En. Subd. 6, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.6. Rooms for county purposes. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: When there are no necessary county buildings, to provide suitable rooms for county purposes.

History: En. Subd. 7, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

Provide Suitable Rooms for County Purposes

Held, that the provision of this section, granting power to the board of county commissioners to provide suitable rooms "when there are no necessary county buildings" refers to a present proprietorship of such buildings by a county and

not to property temporarily held and used under lease for county purposes. *Bennett v. Petroleum County et al.*, 87 M 436, 444 et seq., 288 P 1018.

Id. The matter of leasing privately owned property under power granted the board of county commissioners by this section, is one addressed to the sound judgment and discretion of the board.

4465.7. Obtaining property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage and control the same; but no purchase of real property, exceeding the value of one hundred dollars (\$100.00), must be made unless the value of the same has been previously estimated by three (3) disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933. See history of Sec. 4465.

Power to Purchase Property

This section, relative to the manner of purchasing real estate, applies to a bridge.

State ex rel. Donlan v. Board of Commrs., 49 M 517, 523, 143 P 984.

This section refers to an outright purchase of property for county purposes, but it has no application to the acquisition of a right of way under the general highway law. *Flynn v. Beaverhead County*, 54 M 309, 314, 170 P 13.

4465.8. Erection of county buildings. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.9. Sale of property. The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however, acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred (\$100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be

stated in the notice of sale. Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five (\$5.00) dollars per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction of any property unless it has been appraised within three months prior to the date of sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value. If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety (90%) per cent of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred (\$100.00) dollars, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five public places in the county at least five days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county. Provided, however, if within three years no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of real estate for any lands or real estate of equal value located in proximity to land or tracts of land owned by the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

Power to Sell Property

A county is merely a subdivision of the state for governmental purposes, and as such is subject to legislative regulation and control; the legislature may within the limitations prescribed by the constitution, circumscribe or extend the powers to be exercised by a county, and legislative authority to regulate or control the disposition of county property not having been limited by the constitution, it could

properly declare, as it did by section 4444 and this section, that such property may be sold only under the restrictions and in the manner therein indicated. *Franzke v. Fergus County et al.*, 76 M 150, 245 P 962.

Id. Held, on application for writ of injunction, that a county is without power to enter into an agreement to sell land owned by it, on the installment plan, its power in that regard being limited to an actual sale at public auction and for cash by this section.

Id. Held, that the contention of this section, providing the method to be pur-

sued in selling county property, applies only to a sale of property obtained for purely public purposes but no longer needed for such purposes, and that therefore

a ranch held by it in its proprietary capacity and not acquired for a public purpose does not fall within its purview, cannot be sustained. 76 M 150, 156 et seq.

4465.10. Examination and allowance of officers' accounts. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the regular monthly meeting of the board, to examine and allow the accounts of all officers having the care, management, collection or disbursements of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

History: En. Subd. 11, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.11. Accounts to be examined, settled and allowed. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the regular meetings of the board to examine, settle and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.

History: En. Subd. 12, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

Allowing Accounts

The word "accounts" used in this section must be understood in a broad, generic sense, and as including any right to or claim for money which is due and payable from the county treasury. State ex rel. Dolin v. Major, 58 M 140, 148, 192 P 618.

Construing prior to amendment, the board of county commissioners is given power "to examine, settle and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provides for the issuing of the same." The relators' claims come within the meaning of the word "account" as used in this statute. State ex rel. Lockwood v. Tyler, 64 M 124, 131, 208 P 1081.

Construing prior to amendment, the right to recover from the county depends, not only upon the authority of the county

attorney to incur the liability against the county, but also upon the necessity for incurring the expense, whether in connection with criminal cases or "contingent expenses necessarily incurred for the use and benefit of the county." The necessity is, primarily, to be determined by the county attorney, but his determination is subject to review by the board when it takes up the claim for allowance or disallowance, under the authority vested in it by this section. In re Hyde, 73 M 363, 368, 236 P 248.

Held, that since under this section, the board of county commissioners is authorized to examine, settle and allow all claims against the county, its failure to ascertain whether charges made under a county printing contract were in accordance therewith deprives the county of the right to charge that claims filed for work done under the contract were fraudulent. Carbon County v. Draper, 84 M 413, 419 et seq., 276 P 667.

4465.12. Taxation. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To levy such tax annually, on the taxable property of the county for county purposes as may be necessary to defray the current expenses therefor, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the assessed valuation for any one (1) year; and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

Power to Tax

Under the law as it stood in 1892, the commissioners of a county had power to levy a tax on the taxable property of a school district within their county to satisfy a judgment against the trustees of

such district, where the funds under the control of such district were insufficient to pay the same, and mandamus was available to compel such levy without a statute expressly authorizing county commissioners to make an assessment for such purpose. State ex rel. Shapley v. Board of Commrs. of Yellowstone Co., 12 M 503, 507, 31 P 78.

4465.13. Equalizing assessments. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To equalize the assessments.

History: En. Subd. 14, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.14. Direction of law suits. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To direct and control the prosecution and defense of all suits to which the county is a party.

History: En. Subd. 15, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.15. Insurance of county buildings. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To insure the county buildings in the name of and for the benefit of the county.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.16. Licenses. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To grant licenses for keeping ferries, and such other licenses as are provided by law.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.17. Fixing of compensation of officers not otherwise provided for. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same.

History: En. Subd. 18, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.18. Filling vacancies in county, township and precinct offices. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To fill by appointment all vacancies that may occur in county, township or precinct offices, except in the office of county commissioner.

History: En. Subd. 19, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.19. Contract for printing and supplies. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To contract for the county printing, and provide books and stationery for county officers.

History: En. Subd. 20, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.20. Publication of proceedings, list of claims, financial statement. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: At the adjournment of each session of the board to cause to be published in a newspaper, a complete list of all claims ordered paid for all purposes showing the name, purpose and amount, and a fair summary of the minutes and records of all of its proceedings, and also to be published annually in a newspaper the county clerk's annual statement of the financial condition of the county; and provided that publication of such minutes and records of proceedings must be made within twenty-one (21) days after the adjournment of the

session, and publication of the financial statement must be made within thirty (30) days after the presentation of the same to the board of county commissioners, and the board of county commissioners shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

History: En. Subd. 21, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.21. Representing and management of county property and business. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.22 Rules and enforcement. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To make and enforce such rules for its government, the preservation of order and the transaction of business, as may be necessary.

History: En. Subd. 23, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.23. Seal of county. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To adopt a seal for the board, a description and impression thereof must be filed by the clerk in the offices of the county clerk and the secretary of state.

History: En. Subd. 24, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.24. Necessary acts. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

History: En. Subd. 25, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.25. Borrowing money. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To borrow money upon the credit of the county to meet current expenses, if the county revenue is insufficient.

History: En. Subd. 26, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.26. Bonds for construction may be issued. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To issue on the credit of the county, coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of the code.

History: En. Subd. 27, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.27. Lease of county property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are

prescribed by law: To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed three (3) years.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.28. Garbage and ash collection—tax. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled areas contiguous to corporate limits of cities and not included therein. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to levy not to exceed three mills on the taxable property within such district for the maintenance and support thereof.

History: En. Subd. 29, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4465.29. Lease of county property for hospital purposes. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county buildings, equipment, furniture and fixtures, for hospital purposes, with full power of lessor, except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the general fund of the county.

No such lease and demise shall be made for a longer period than five years, nor shall said board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for five weeks and that the said buildings and equipment are for lease for hospital purposes.

History: En. Subd. 30, Sec. 1, Ch. 100, L. 1931. See history of Sec. 4465.

4466. Validation of sales made under section 4465.9. All sales heretofore made of real property owned in fee simple by any county in this state, by the board of county commissioners of any county, the validity of which may be in doubt or involved by reason of the failure of the board of county commissioners to comply with the provisions of section 4465.9, are hereby legalized and declared to be valid and binding sales, and all deeds or conveyances heretofore executed by any board of county commissioners,

or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such real property so sold, are hereby legalized and declared to be valid, and vesting the title of the property so conveyed in the purchaser named in such conveyance in fee simple.

History: En. Sec. 1, Ch. 103, L. 1913; re-en. Sec. 4466, R. C. M. 1921.

CHAPTER 346

SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

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4467. Records of water users' associations. The county commissioners of each county where water users' associations, organized in conformity with the laws of the United States under the reclamation act, have organized, or wherein such associations shall hereafter organize, are required to furnish the county recorder, for the proper recording of stock subscriptions and contracts, and of articles of incorporation and stock certificates of such companies, books to conform to such articles of incorporation, stock certificates, and contracts as are used by the secretary of such water users' associations, containing printed blank forms of such stock subscriptions and contracts, and articles of incorporation and stock certificates, in accordance with the laws of the United States and of the state of Montana, such forms to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

The county recorder shall charge fifty cents for recording each stock subscription and contract, stock certificate, and articles of incorporation.

History: En. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R. C. M. 1921.

Related sections: 147, 7160-7165.

4468. New townships, how organized. The board must not set off or organize any new township unless a petition is presented to the board, signed by at least fifty citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895, Rev. C. 1907; re-en. Sec. 4468, R. C. M. 1921.

4469. Sheriff to attend meetings when directed. The board has the power to direct the sheriff to attend in person or by deputy all the meetings of the board, to preserve order, and serve notices or citations, as directed by the board. And the board has the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to district courts to require obedience to their citations and decorum in their meetings.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R. C. M. 1921. Cal. Pol. C. Sec. 4047.

4470. County commissioners may protect forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: En. Sec. 105, Ch. 147, L. 1909; re-en. Sec. 4470, R. C. M. 1921.

4470.1. Appropriating money for advertising of county products authorized. The board of county commissioners of any county in the state is hereby authorized to make an appropriation of money from the general fund of the county for the purpose of advertising the agricultural, commercial, mining, manufacturing, labor or other resources of the county, through the exposition exhibits committee of the state department of agriculture, labor and industry, or for the purpose of assisting the said department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state of Montana.

History: En. Sec. 1, Ch. 107, L. 1927.

4470.2. Limitations on appropriations—transmittal to department of agriculture, when. Said appropriation shall not exceed in any one year the following amounts, to-wit: in counties of the first class or second class, one thousand dollars (\$1,000.00); in counties of the third class, five hundred dollars (\$500.00); in all other counties, two hundred fifty dollars (\$250.00). Said money shall be expended in such manner as the board of county commissioners may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits hereinabove indicated.

History: En. Sec. 2, Ch. 107, L. 1927.

4470.3. Transfer of funds to relief fund authorized, when. Whenever the governor of the state of Montana shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration or other public calamity, the board of county commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any moneys in any other fund or funds of the county, but no moneys

belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made.

History: En. Sec. 1, Ch. 43, L. 1933.

4470a-4470b. Repealed—Chapter 107, laws of 1927.

4471. County commissioners may establish public scales. The board of county commissioners of any county is hereby authorized, in its discretion, when petitioned by twenty-five or more residents and freeholders of the county, to establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905; re-en. Sec. 2899, Rev. C. 1907; re-en. Sec. 4471, R. C. M. 1921.

4472. Capacity of scales. Such scales shall be purchased by the county, and be of not less than five tons' weighing capacity, and shall be provided with glass or open front which can be observed by the one weighing, without dismounting from wagon, and shall be the property of the county, and at all times be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R. C. M. 1921.

4473. Public weigher. The board of county commissioners shall appoint at each place where public scales are established by them a public weigher, who shall have the custody¹⁸⁵ and care of such property, and who shall give a bond to the county in the sum of five hundred dollars, conditioned for the safe-keeping of the same, and for the faithful and impartial discharge of the duties incident to his trust in office.

History: En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R. C. M. 1921.

4474. Duty of public weigher. It shall be the duty of each public weigher to keep a stub record of all weighing done by him, which record and the receipt issued by such public weigher shall show for whom property was weighed, and the character and kind thereof, and shall constitute prima facie evidence of the facts therein contained; and all such stub records, or other records which the county commissioners may require him to keep, shall at all times be open to public inspection during business hours, between seven a. m. and six p. m. of any day, save and except Sundays and legal holidays, and such public weigher shall file a sworn statement with the county recorder of the county, as prescribed by the county commissioners thereof, which statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected.

History: En. Sec. 4, Ch. 22, L. 1905; re-en. Sec. 2902, Rev. C. 1907; re-en. Sec. 4474, R. C. M. 1921.

4475. Rules and regulations. Such public weigher shall receive not to exceed ten cents for each receipt issued by him, and shall be governed by such rules and regulations as may be from time to time prescribed or

adopted by the board of county commissioners, and he may be removed at any time by such board.

History: En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R. C. M. 1921.

4476. False receipts. Any public weigher, under the provisions of this act, who shall make any false or fraudulent receipt of any weighing done by him, or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights, or who shall fail to comply with the requirements of the preceding section, is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905; re-en. Sec. 2904, Rev. C. 1907; re-en. Sec. 4476, R. C. M. 1921.

4476.1. Commissioners may grant right to construct mains for gas, water and other substances—compensation for damages. That the board of county commissioners of any county of the state of Montana shall have the power and authority to grant to any person, association or corporation the right to construct and maintain in, along and under any public road or highway within such county, any pipe line for the conveyance of natural or artificial gas, water or any other substance, for the use of any county, city or town, or the inhabitants thereof; provided, that, when constructed, such pipe line shall not now or in the future interfere with the surface use of such road or highway; and provided further, that the person, association or corporation owning or constructing such pipe line shall compensate such county for any and all damages done to any such road or highway in the laying, construction or maintenance of such pipe line, and shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.

History: En. Sec. 1, Ch. 75, L. 1927.

4476.2. Effect of act. Nothing in this act contained shall be construed as in any manner affecting any of the terms and provisions of sections 9933 through 9958 as set forth in the revised codes of 1935.

History: En. Sec. 2, Ch. 75, L. 1927.

4477. Public ferries and wharves—establishment and maintenance by counties. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across, or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct, or to acquire by condemnation or purchase, and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay, within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: En. Sec. 1, Ch. 33, L. 1909; re-en. Sec. 4477, R. C. M. 1921.

References

Cited or applied as chapter 33, laws of 1909, in *Reid v. Lincoln County*, 46 M 31, 63, 125 P 429.

4478. Same—acquisition of real property—proviso as to incorporated cities and towns. The board of county commissioners, in the exercise of the power herein bestowed, may acquire real property as provided in the code of civil procedure, sections 9933 to 9958; provided, that no county ferry or wharf shall be established or maintained with a landing-place in any incorporated town or city, which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the foot of streets terminating at a river or harbor.

History: En. Sec. 2, Ch. 33, L. 1909; re-en. Sec. 4478, R. C. M. 1921.

4479. Ferries uniting two counties—reports of ferrymen on joint ferries. When public ferries, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate any such ferry or ferries, provided that each county shall acquire its own landings and approaches, and maintain the same separately. Where ferrymen are employed on joint ferries, each county board shall receive a quarterly report from said ferrymen, giving such information as the board of county commissioners of either county may require.

History: En. Sec. 3, Ch. 33, L. 1909; re-en. Sec. 4479, R. C. M. 1921.

4480. Employment of ferrymen—leasing of ferries and wharves. The board of county commissioners may employ one or more ferrymen to operate free or toll ferries, and the board may lease any ferries or wharves to a company, firm, or individual, to be operated for the use of the public, and said company, firm, or individual shall give bond in an amount deemed sufficient by the board of county commissioners, and conditioned for the careful and businesslike operation of such ferry or wharf, in accordance with law and the regulations of said board.

History: En. Sec. 4, Ch. 33, L. 1909; re-en. Sec. 4480, R. C. M. 1921.

4481. Rules and regulations—posting rate of toll. The board of county commissioners shall make all needful rules and regulations for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies; and in all cases the rate of toll shall be printed in legible form, and posted upon the boat and at the landing-places.

History: En. Sec. 5, Ch. 33, L. 1909; re-en. Sec. 4481, R. C. M. 1921.

4481.1. Definition of “minerals” and “real property.” As used in this act the word “minerals” means, and shall be construed to include, minerals of every kind, character and description, including oil and gas; and the words “real property” mean, and shall be construed to include, any and all real property acquired by the county by purchase, tax deeds, legal proceedings or however acquired.

History: En. Sec. 1, Ch. 154, L. 1935.

4481.2. Counties may reserve mineral right on conveying real property—limitation—payments, how made. The board of county commissioners of any county in this state when making sales and conveyances of real property, may in such cases as in its judgment it is for the best interests of the county so to do, reserve to the county, and except from the sales and con-

veyances, not to exceed six and one-quarter ($6\frac{1}{4}$) per centum of all minerals therein or thereafter mined, produced, extracted or otherwise taken therefrom, and in such cases it shall be provided in each conveyance that if the purchaser, his or its heirs, executors, administrators, successors, grantees, assigns, lessees or any other person, firm or corporation, shall mine, produce, extract or otherwise take any minerals from the real property described therein, the one so doing shall at such time or times as the owner of such reservation, or of any interest therein, shall designate, pay in cash to the owner of such reservation, or to each owner of an interest therein in proportion to his interest, the fair market value of the reserved per centum of all such minerals mined, produced, extracted or otherwise taken from said real property, as the value and purchase price of the interest of the owner or owners of said reservation in the minerals so mined, produced, extracted or otherwise taken from said real property, and this obligation shall run with the unreserved portion of said minerals and be binding and obligatory upon any and all persons who mine, extract, produce or otherwise take any of the minerals from said real property. When the county is the owner of the reservation or of any interest therein, such payment shall be made to the county treasurer at such time or times as the board shall designate.

History: En. Sec. 2, Ch. 154, L. 1935.

4481.3. Application of proceeds. All proceeds received from said mineral reservations, or of any part or parts thereof, shall be applied, in the case of tax deed lands, in the same manner that moneys received from the sale of tax deed lands are now or hereafter required to be applied. Where the mineral reservations are in lands which represent a fund or funds, or in which a fund or funds have an interest (other than tax deed lands), the proceeds shall be applied to such fund or funds to the extent of such representation or interest, the balance to be credited to the general fund of the county. In all other cases the proceeds shall be credited to said general fund.

History: En. Sec. 3, Ch. 154, L. 1935.

4481.4. Validation of mineral reservations heretofore made by counties.

All mineral reservations heretofore made by counties in this state, whether the same are of a greater percentage than is herein fixed, or not, and all agreements in connection with such reservations, heretofore made, whether in conformity with this act or not, are hereby ratified, confirmed and validated.

History: En. Sec. 4, Ch. 154, L. 1935.

4482. Contracts for county printing—duty of county commissioners—rates and prices—bond of printer—terms of contract. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general circulation, printed and published within the county, and having been printed and published continuously in such county at least one year immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable including all legal advertising required by law to be made, blanks, blank

books, stationery, election supplies, loose leaf forms and devices, official publications, and all other printed forms required for the use of such counties at not more than the following prices:

OFFICIAL PUBLICATIONS AND LEGAL ADVERTISING.

For every folio or fraction thereof, one dollar and fifty cents shall be paid for the first insertion thereof, and fifty cents per folio for each subsequent insertion required by law to be made. For rule and figure work, two dollars per folio or fraction thereof, for the first insertion, and fifty cents per folio for each subsequent insertion thereof, required by law to be made. That for the purpose of establishing a basis of measurement one column thirteen ems wide and one inch in depth, when set in solid six point type shall constitute a folio; one column thirteen ems wide and one and two-tenths inches in depth when set in solid seven point type shall constitute a folio; one column thirteen ems wide and one and four-tenths inches in depth when set in solid eight point type shall constitute a folio; one column thirteen ems wide and one and five-tenths inches in depth when set in solid ten point type shall constitute a folio.

ENVELOPES

			500	1000	Addl. 1000
6¾ White Wove, 24 sub.	\$3.00	\$5.00			\$4.00
10 White Wove, 28 sub.	3.75	6.50			5.50
6¾ Manilla, 20 sub.	2.50	4.00			3.00
10 Manilla, 28 sub.	3.00	5.00			4.00
12 Manilla, 28 sub.	4.00	6.25			5.75

LETTERHEADS.

			500	1000	Addl. 1000
Letterheads, 8½ x11, 20 sub. White Bond	\$5.25	\$7.50			\$4.50
Letterheads, 8½x11, 16 sub. White Bond	4.75	7.00			4.00

LEGAL BLANKS.

					Addl.
	250	500	1000	1000	
1/8 Sheet, 3 1/2x8 1/2, printed one side	\$ 3.75	\$ 4.25	\$ 6.50	\$ 5.00	
1/8 Sheet, 3 1/2x8 1/2, printed two sides	5.50	6.50	9.50	6.00	
1/4 Sheet, 7x8 1/2, printed one side	4.75	5.75	8.50	6.00	
1/4 Sheet, 7x8 1/2, printed two sides	7.50	8.50	11.50	8.00	
1/2 Sheet, 8 1/2x14, printed one side	8.75	10.25	14.00	8.50	
1/2 Sheet, 8 1/2x14, printed two sides	12.00	13.50	20.00	10.00	
Full sheet, 8 1/2x28, printed one side	13.25	15.25	24.00	14.00	
Full sheet, 8 1/2x28, printed two sides	21.75	23.75	31.50	15.00	
Full sheet, 17x14, printed one side	18.00	20.00	26.00	14.50	
Full sheet, 17x14, printed two sides	28.00	30.00	38.00	15.00	

The above prices are based on blank or marginal ruled stock, 20 sub., padded or loose.

BILL HEADS

			Addl.
	500	1000	1000
No. 6—8½x4 2/3	\$3.00	\$4.75	\$3.75
No. 4—8½x7	3.25	5.00	4.00
No. 2.—8½x14	4.25	6.50	5.50

The above prices are based on ruled flat writing paper, 20 sub., padded or loose.

		Addl.
	1000	1000
Assessment lists, 24 page book form, complete	\$97.50	\$27.50

RECEIPTS, WARRANTS AND LICENSES.

		Addl.
	1000	1000
General receipts or school warrants—with stub, 3½x14, printed one color ink, 20 sub. bond paper, numbered, perforated and bound in books of 100 sheets each.....	\$12.25	\$7.00
General receipts in duplicate, 3½x8½, printed one color ink, 16 sub. bond paper, numbered, perforated, gathered, and bound in books of 50 original and 50 duplicate each.....	16.25	12.00
Poor or road tax receipts in one color ink, 16 sub. bond paper, numbered, perforated, and bound in books of 50 receipts each	12.50	7.00
Poor or road tax receipts in two colors ink, 16 sub. bond paper, numbered, perforated and bound in books of fifty receipts each	14.50	9.00
Licenses, 8½x14, one color ink, 20 sub. bond paper, numbered, perforated and bound in books of 100.....	24.00	17.00
Licenses, 8½x14, two colors ink, 20 sub. bond paper, numbered, perforated, and bound in books of 100	27.50	21.00
Tax receipts, 9¼x11¾ in quintuple, different color paper for each sheet, one color ink, numbered, gathered, perforated and bound in books of 50 sets each	68.25	46.75
Tax receipts, 10¾x16¾, in quintuple, different color paper for each sheet, one color ink, numbered, gathered, perforated and bound in books of 50 sets each	77.00	51.50
Delinquent tax receipts, 9¼x11¾, in triplicate, different color paper for each sheet, one color ink, numbered, gathered, perforated and bound in books of 50 sets each.....	37.50	30.00
Printed warrants one color ink, four warrants on a sheet, duplicate or fold over style, perforated, numbered, gathered and punched for loose leaf binder, per 1000 warrants.....	37.50	30.00
For binding 1000 warrants as described above, check binding, 1 book	2.50	.....
Half bound, 1 book	4.50	.....

ELECTION SUPPLIES

Envelopes for poll books, each	\$.25
Envelopes for tally sheets, each .....	.25
Envelopes for voted ballots, each .....	.45
Envelopes for unused ballots, each .....	.45
Envelopes for return of election books .....	.45
Envelopes for precinct registers .....	.45
Envelopes for return of election .....	.10
Envelopes for absent voters, 200, \$12.00; additional 100	3.50
Tally books, each	1.75
Poll books, each	1.75

	Addl.	
	1000	1000
Registration cards, 6x4, printed one side, punched.....	\$ 7.00	\$5.00
Registration cards, 6x4, printed two sides, punched	11.00	7.00
Precinct register sheets, 8½x14, special ruled and printed, both sides, punched, 20 sub. bond paper	42.00	14.75
Precinct register sheets, 14x17, special ruled and printed, both sides, punched, 20 sub. bond paper	60.25	17.75
Covers for precinct register, 8½x14, 125 lb. tagboard, cover printed, back cover plain, both punched, per 50 sets.....		6.50
Additional 50 sets		4.50
Covers for precinct register, 14x17, 125 lb. tagboard, cover printed, back cover plain, both punched, per 50 sets		8.50
Additional 50 sets		6.50
Instructions to voters, 14x22 on 100 lb. tagboard, per 100.....		25.00
Additional 100		10.00

List of electors 7c per name. This price includes printing up to 100 copies of each precinct list on 20 lb. bond paper.

	Addl.	
	1000	1000
Ballots, primary election, complete, including numbering, per- forating, assembling, rotated and stitched, per party	\$45.00	\$35.00
Ballots, general election, complete, including numbering and perforating	65.00	35.00
Ballots, initiative and referendum, complete, including per- forating and numbering	10.00	6.00

BLANK BOOKS MADE TO ORDER.

	4	5	6	7	8
Demy 10½x16	Quire	Quire	Quire	Quire	Quire
Plain ¾ Russia	\$14.65	\$16.15	\$17.65	\$19.15	\$20.65
Plain full Russia	21.75	23.25	24.75	26.25	27.55
Printed head full Russia	25.90	27.40	28.90	30.40	31.90
Printed page full Russia	32.65	34.90	37.75	39.40	41.25

For each extra heading \$3.50, and each extra full page \$5.00 shall be charged.

	4	5	6	7	8
Medium 18x11½.	Quire	Quire	Quire	Quire	Quire
Plain ¾ Russia	\$18.40	\$20.25	\$22.50	\$24.75	\$27.00
Plain full Russia	25.90	27.75	29.65	31.50	33.40
Printed head full Russia	32.25	35.25	36.35	39.00	41.25
Printed page full Russia	38.25	40.90	43.50	46.15	48.75

For each extra heading \$4.00, and for each extra full page \$7.00 shall be charged.

Double cap 17x14.

Plain ¾ Russia	\$18.40	\$20.25	\$22.50	\$24.75	\$27.00
Plain full Russia	25.90	27.75	29.65	31.50	33.40
Printed head full Russia	32.25	35.25	36.75	39.00	41.25
Printed page full Russia	38.25	40.90	43.50	46.50	48.75

For each extra heading \$4.00, and for each extra full page \$7.00 shall be charged.

Double Demy 16x21.

Plain ¾ Russia	\$25.15	\$27.40	\$29.65	\$31.90	\$34.15
Plain full Russia	40.15	42.40	44.65	47.65	50.25
Printed head full Russia	46.90	50.25	54.00	57.75	61.50
Printed page full Russia	48.00	52.50	57.00	61.50	66.00

For each extra heading \$6.00, and for each extra full page \$7.50 shall be charged.

Double medium 18x23.

Plain ¾ Russia	\$30.00	\$34.50	\$38.25	\$42.40	\$46.50
Plain full Russia	47.65	51.75	55.90	60.15	64.50
Printed head full Russia	53.65	58.15	62.65	67.15	71.65
Printed page full Russia	56.65	61.15	65.65	70.15	74.65

For each extra heading \$6.00, and for each extra full page \$8.00 shall be charged.

Assessment Books.

¾ Russia, page 21x32	\$75.00	\$82.50	\$90.00	\$97.50	\$105.00
¾ Russia, page 18x46	82.50	90.50	98.50	107.00	115.00

Fractional quires to be computed at full quires. Quires to consist of 80 pages, 40 folio pages, 40 leaves.

All other blank books and printing not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog List.

The contract shall be let to the newspaper that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient undertaking in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties, conditioned to the effect that said contractor will faithfully perform all the conditions of said contract in accordance with the terms thereof, or in any default thereof, said sureties shall pay the said county the sum mentioned in said undertaking as the penalty thereof; provided that

nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. No such contract for printing shall extend for a period of more than two years. All newspapers which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sub-let such contract or portion of contract to some newspaper or printing establishment within the state, which shall do the work under contract so sub-let entirely within the state with Montana labor.

History: En. Sec. 4233, Pol. C. 1895; re-en. Sec. 2897, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1917; re-en. Sec. 4482, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1929.

Constitutionality

On the authority of *Hersey v. Neilson*, 47 M 132, and *Stange v. Esval*, 67 M 301, held that this section, requiring the contract for county printing to be let to a newspaper published in the particular county continuously for a period of one year immediately preceding its letting, is not void as in violation of the fifth and fourteenth amendments to the federal constitution, as depriving the county of the right to contract and granting a person a privilege or immunity not granted to another, or of section 26, article V of the state constitution, prohibiting the enactment of special or class legislation, or of sections 3 and 27, article III, thereof, as denying the county the right to contract and depriving it of property without due process of law. *State ex rel. Woare v. Board of Commrs.*, 70 M 252, 253 et seq., 225 P 389.

Id. This section held not open to the objection that in making it compulsory upon the board of county commissioners to let the county printing to a newspaper in existence for a year or more even though its bid be higher than that of one not published for that length of time, it indirectly contravenes the provision of section 4, article XII, of the state constitution, prohibiting the levying of taxes upon the inhabitants or property in any county for municipal purposes, since a county is but a subdivision of the state for governmental purposes and as such subject to legislative control, and the state has power, as sovereign proprietor, to provide from whom and upon what terms it will purchase the supplies needed in the discharge of its governmental functions.

Qualification of Bidders

This section provides that the county commissioners shall contract for the county printing with some newspaper which has been published continuously within the county for at least one year immediately preceding the awarding of the contract. Two papers submitted bids, one of which had been established in the county

about seven months, while the other had been published therein for several years. The contract was awarded to the former. Held, in a taxpayer's suit that the district court improperly denied an injunction to prevent the carrying out of the contract, it having been the duty of the county commissioners, under this section, to award the contract to the paper which met the requirement of publication within the county for at least one year preceding the awarding of the contract. *Stange v. Esval et al.*, 67 M 301, 304, 215 P 807.

Held, that by the requirement of this section, county commissioners must contract with a newspaper of general circulation "published" within the county and which has been published therein at least one year, to perform the county printing, a paper is contemplated the work of composing, printing, issuing and distributing of which is done in the county, and not one the composition and printing of which is done in another county and sent to the county in which it maintains an office for distribution. *State v. Board of County Commrs. et al.*, 77 M 316, 321, 250 P 606.

Id. This section, as construed above, held not to prohibit the use of "patent insides" used in small country newspapers, they not affecting the status of a paper so long as it otherwise meets the necessary requirements of a newspaper of general circulation.

Id. The fact that a weekly newspaper secured a government permit for entry in the postoffice as second-class matter at the county seat of the county in which it was distributed, though published in an adjoining county, is of no consequence in determining whether it was "published" in the former to qualify it as a bidder for county printing under this section.

Id. Where an eight-page newspaper for some four months of the year necessary to qualify it for bidding on county printing was published in another county, a "supplement" consisting of one sheet printed on one side, issued by the publisher in the former county during the four months, for which, however, no permit for entry in the postoffice had ever been obtained, which was included in and designated a part of the regular issue, and the name of which was subsequently changed

to that of the regular paper, was not the newspaper contemplated by this section, and therefore not entitled under the name of the regular paper to bid on county printing.

Rates

This section, authorizing the board of county commissioners to contract for county printing does not authorize it to increase the rates therein prescribed; it, by fixing the maximum rates, by fair implication prohibits the payment of anything in excess thereof; therefore any claims allowed beyond the rates fixed are not legally chargeable against the county and may be recovered in an action by the county attorney in behalf of the county. *Carbon County v. Draper*, 84 M 413, 418 et seq., 276 P 667.

Id. The board of county commissioners is a quasi-judicial body and its action in examining, settling and allowing claims against the county, in the absence of fraud, is conclusive even though it be erroneous; therefore where it allows charges for public printing in excess of the contract price but less than the maximum rate fixed by law, the county may not recover the excess as an illegal charge.

Id. Held, under this section, a publisher may under his contract with a county for county printing, properly charge the full rate for printing blank forms for a less number than the minimum fixed by the section as the basis rate, and is not required to charge only a proportionate part of the price fixed therein.

4482.1. Matter included in price. All prices set forth herein include paper stock specified, all printing, and work complete and delivered at the courthouse.

History: En. Sec. 2, Ch. 10, L. 1929.

4482.2. Substance defined. That for the purpose of defining the meaning of the word "substance," used in connection with paper stock mentioned herein it is understood that all substance weights are to be computed on the basic size 17x22 inches; conforming to the uniform scale of sizes and weights as used by paper manufacturers.

History: En. Sec. 3, Ch. 10, L. 1929.

4482.3. Act not applicable to printing for county fairs and expositions. None of the provisions of this act shall apply to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

History: En. Sec. 4, Ch. 10, L. 1929.

4482.4. Penalty for violations. That any violation of this act shall be deemed a misdemeanor and punished as such.

History: En. Sec. 5, Ch. 10, L. 1929.

4483. Rewards by county commissioners for apprehension of criminals. The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of five hundred dollars for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county. In no case shall the members of the board of county commissioners, sheriff, or other county officer receiving an annual or monthly salary, be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909; re-en. Sec. 4483, R. C. M. 1921.

Operation and Effect

Construing this section authorizing the board of county commissioners to offer rewards for the apprehension and conviction

of persons who have committed a felony, held, that by the use of the words, it was the intention to authorize rewards only after a felony has been committed. *Lewis v. Petroleum County*, 92 M 563, 566, 568, 17 P 2d 60.

4484. Employment of stock inspector by county commissioners. The board of county commissioners of each county, except in counties of the first class, has the power, to employ a stock inspector whenever the board is satisfied from its own knowledge, or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock are being stolen, slaughtered, or otherwise disposed of contrary to law in such county, and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution. Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation, and his compensation shall be at the rate of not to exceed the sum of seven dollars and fifty cents per day and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county, and during the existence of such appointment he shall be vested with the same police power and authority as the sheriff, within the limitation of the purposes for which he is appointed.

Whenever a stock inspector is so employed in the investigation of a crime, and a reward has been offered under the preceding section for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

History: En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R. C. M. 1921.

4485. Secrecy to be maintained regarding employment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed and any officer who divulges the name of the stock inspector employed, or the purpose of his employment during such period, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 61, L. 1909; re-en. Sec. 4485, R. C. M. 1921.

4486. Special counsel to assist county attorneys. The board of county commissioners has the power, except in counties of the first class, whenever, in its judgment, the ends of justice or the interests of the county require it, to employ, or authorize the county attorney to employ, special counsel to assist in the prosecution of any criminal case pending in such county, or to represent said county in any civil action in which such county is a party.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R. C. M. 1921.

4486.1. Auto passes excluding livestock may be constructed on public roads connecting with fenced state highway. Where a public road or roads connects with a state highway, which state highway is fenced on both sides, the county commissioners, of the county in which said roads are located, may cause to be constructed and maintained thereon extensions of the fence on the sides of the state highway and across the intersecting road leaving in such fences a pass across which must be constructed a passage which will permit the passage of automobiles and trucks but shall prevent and exclude loose livestock from drifting upon said state highway, and there shall also be maintained in said extensions a gate to permit the passage of livestock, wagons or other vehicles.

History: En. Sec. 1, Ch. 153, L. 1933.

4486.2. Same—construction on public or county roads—purpose and intent of act. County commissioners may construct, or cause to be constructed under their direction, on public or county roads, passes across which such roads may continue and which shall be so constructed that automobiles and trucks may cross same and which shall be impassable for livestock. Where necessary gates shall also be maintained as provided in section 4486.1; provided, that it is the spirit and intent of the statute, that the discretion granted to boards of county commissioners under this act shall consider primarily the use and benefit of public roads to the general public.

History: En. Sec. 2, Ch. 153, L. 1933.

4486.3. Construction of auto pass not to deprive legal fence of character. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

History: En. Sec. 3, Ch. 153, L. 1933.

4487. Extension work in agriculture and home economics—county commissioners may appropriate money for. The county commissioners of any county in the state of Montana may appropriate money from the general funds of the county treasury, or from funds provided by special levy, which the said county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the said county in co-operation with the Montana state college of agriculture and mechanic arts, and the United States department of agriculture. The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents, the compensation and conditions of service of such agents, shall be covered in memoranda of agreements between the county commissioners, the county farm bureau, and the Montana state college of agriculture and mechanic arts.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919; re-en. Sec. 4487, R. C. M. 1921.

4487.1. Counties authorized to deed land for park to state or United States—reversion of title. The county commissioners of any county in the state of Montana are hereby authorized to convey to the state of Montana or the United States of America any tract of county owned land not exceeding one thousand two hundred eighty acres (1,280), to be used for the establishment and maintenance of a park and to be maintained by the state or federal government as a public park or recreational grounds. Said land shall be deeded to the state or federal government without charge, but upon the condition that the same shall be devoted and maintained by the state or federal government for the purpose specified in this act, and in the event that said land shall cease to be used for such purposes for a period of five (5) years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935.

4487.2. Exchanging tax deed land for United States land authorized. All real property heretofore or hereafter acquired by any county under tax title, which in the judgment of the board of county commissioners is suitable for the production of trees or as a water shed or for other national forest purposes, may be conveyed by deed to the United States of America by the board of county commissioners in exchange for government land or timber, if in the discretion of the board it is to the advantage and best interests of the county to make such exchange. The board of county commissioners is hereby authorized to accept from the United States of America for and on behalf of the county, as full compensation for such county land so exchanged, title to land or timber of the United States equal in value to the appraised value of the county land so exchanged for the same.

History: En. Sec. 1, Ch. 150, L. 1935.

4487.3. Disposal of timber acquired by counties. The county commissioners are hereby authorized to dispose of any timber acquired from the United States in any exchange, by agreement with the United States department of agriculture that such timber shall be cut and removed by any agency selected by the United States department of agriculture with the understanding that the stumpage payments for timber so cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States, provided that the amounts of such stumpage payments so paid over shall equal the appraised value of the county land exchanged for same, and such cash payments shall be deposited in the county treasury for the use of the county.

History: En. Sec. 2, Ch. 150, L. 1935.

4487.4. Sale of land and timber acquired. All land and all timber not subject to the arrangement authorized in section 4487.3, acquired by the county under the provisions of this act may be sold by the board of county commissioners in the manner provided by law for the sale of county property and the proceeds of such sale shall be deposited in the county treasury for the use of the county.

History: En. Sec. 3, Ch. 150, L. 1935.

4487.5. Conveyance to United States—effect—notice not required—expenses. The execution by the board of county commissioners of a deed of conveyance to the United States of America of any county land conveyed under this act, shall operate to discharge and cancel all tax levies, tax liens and special assessments of every sort and kind against such land and to convey all of the county's title to such lands at the time of the execution of said deed. No public notice of the intention to convey title to the United States of America to any of the property subject to this act shall be necessary. The board of county commissioners shall have authority to defray all expenses necessarily incident to such exchange.

History: En. Sec. 4, Ch. 150, L. 1935.

4488. County commissioners may erect market houses and establish markets. In addition to the powers specifically granted by the laws of the state of Montana, and such other limitations and exceptions contained in the existing statutes of the state of Montana in reference to the debt-

incurring power of boards of county commissioners, the boards of county commissioners in every county in the state of Montana shall have the power to erect market houses, to be located at the county seats of their respective counties, and to establish and regulate markets, and to acquire the property necessary therefor.

History: En. Sec. 1, Ch. 28, L. 1917; re-en. Sec. 4488, R. C. M. 1921.

4489. Acquisition of property for establishment and maintenance of public markets. The boards of county commissioners within the state of Montana may, within said period of one year, or at any time thereafter, acquire by purchase, lease, construction, or otherwise, suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties. The boards of county commissioners of the counties of the state availing themselves of the provisions of this act must, as soon as the lands and premises necessary therefor have been acquired, cause to be opened and maintained, at the county seats of their respective counties, in the quarters so acquired, an open public market for the benefit of the farmers, gardeners, and actual producers of farm products, for the sale by the producers thereof direct to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.

History: En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R. C. M. 1921.

4490. County auditor or county clerk to act as market-master—powers and duties. In each of the counties of this state wherein the office of county auditor exists the county auditor shall be ex-officio the county market-master, and in all counties of this state hereinbefore enumerated, and in all other counties which may avail themselves of the provisions of this act, wherein no office of county auditor is maintained, the county clerk of such county shall be ex-officio market-master, and as such market-master shall, under the supervision and approval of the board of county commissioners, make all necessary rules and regulations for the establishment, maintenance, operation, and control of the markets established hereunder in the respective counties of the state; and it shall be the duty of such market-master to cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition; to arrange for stalls and spaces in such manner as to best suit the conveniences of both buyers and sellers; to see that the laws in the state of Montana in reference to weights and measures are enforced and observed; to cause order to be preserved during the time such market shall be open and in operation; to prevent and remove obstructions from the market place or grounds; to remove all vagrants, and prevent disorderly conduct, and prevent disorderly persons from loitering in said market buildings, space, or grounds during the market hours; to cause all offenses against the laws of the state of Montana in relation to the inspection of foods, the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, or vegetables, or provisions of any kind, to be prosecuted; to designate proper means of supervising and accounting for the sales therein made,

and collecting the commissions hereinafter provided for; and to generally supervise and control the operations of the public markets established under the provisions of this act.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R. C. M. 1921.

4491. Five per cent. of gross sales to be paid to county—county market fund—penalty for refusal to pay. Every producer of products availing himself or herself of the use of the market place established under the provisions of this act shall pay, or cause to be paid, at the close of each day's business, to the market-master thereof, a charge of five per centum of his or her gross sales; and the funds thus collected by the market-master shall be turned into the county treasury of the county to the credit of the county market fund, and shall be used by the county treasurer towards the payment of the expenses of operating and maintaining such public market; and every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market-master of the county market of any county of this state five per centum of the gross sales by them made within such market shall be guilty of a misdemeanor, and, upon the conviction thereof, shall be fined not less than ten nor more than one hundred dollars, and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privileges afforded by the county markets established at the county seats of every county in the state of Montana.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R. C. M. 1921.

4492. When market shall be open—publication of rules and regulations and notice of market days. All county markets established under the provisions of this act shall be open to the public not less than two days in each week, and the rules and regulations adopted for the government thereof, together with a notice of the market days in each week shall be published by the county commissioners once in each year in every newspaper printed and published in their respective counties for a period of not less than two successive weeks, the first publication thereof to be made not less than two weeks prior to the opening of the markets established hereunder in each county, and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R. C. M. 1921.

4493. Expense of establishing and maintaining public market—how paid. The expense of the establishment and maintaining of the markets provided for in this act shall be paid by the boards of county commissioners from the general funds of the counties, save and except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this act.

History: En. Sec. 6, Ch. 28, L. 1917; re-en. Sec. 4493, R. C. M. 1921.

4494. Purchase of products for resale or speculation prohibited. No rules or regulations adopted for the government of any market established under this act shall permit any person, firm, or corporation to purchase the products displayed and offered for sale, for the purpose of

speculating thereon by again offering the same for sale within such public market place; and the privileges of the markets established under the provisions of this act shall be extended only to the actual producers of the products offered for sale.

History: En. Sec. 7, Ch. 28, L. 1917; re-en. Sec. 4494, R. C. M. 1921.

4495. Extermination of gophers. The county commissioners of any county of this state where there are gophers, upon a petition of ten resident land-owners, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be to poison, kill, and exterminate the gophers within such county, and any person so appointed is hereby empowered and directed to, between March first and September first, enter upon any farm, railroad right of way, grounds or premises where there are gophers, and poison, kill, and exterminate the gophers thereon when the owner or occupant thereof shall neglect or refuse to do so. In any county where there is a duly incorporated farm bureau, the appointment of the aforesaid person or persons to exterminate gophers shall be made on the recommendation of the farm bureau, which shall also supervise the work of the above person or persons.

History: En. Ch. 96, L. 1917; amd. Sec. 1, Ch. 153, L. 1919; re-en. Sec. 4495, R. C. M. 1921.

4496. Notice, how served—supplying poison to landowners financially unable to procure same. It shall be the duty of the person so appointed to give any one, on whose premises are found gophers, ten days' notice in writing to poison, kill, or exterminate the same; or if such land is unoccupied and owned by a non-resident, such notice shall be mailed to its owner's address, or if the address is unknown, posted upon the land or premises where such gophers are to be exterminated; and if upon the land or right of way of any railroad company, such notice may be served upon its agent at the station nearest to such land or right of way; and if the work of exterminating same is not done within such time, the person so appointed by the county commissioners shall proceed to poison, kill, and exterminate the gophers on such land or premises; provided, that any person authorized to exterminate gophers according to the provisions of the act shall, when poison is laid out, use every precaution to prevent the destruction of domestic fowl or animals and of game-birds by such poison, and no person shall lay out poison in any pasture where there is stock, or within forty rods of any occupied dwelling or farmhouse, without the knowledge of the owner or occupant thereof; provided, further, that any person who is not able financially to poison, kill, and exterminate the gophers on his land or premises, may make application to the county commissioners for financial assistance in procuring poison by him for that purpose. Such application shall set forth such facts as may be necessary to advise the county commissioners of the financial condition of such applicant. If, upon investigation, the board of county commissioners shall find such applicant entitled to assistance, it shall be the duty of the board of county commissioners to provide such applicant with sufficient poison or poisoned grains to kill and exterminate the gophers upon his land or premises; provided, that the maximum amount that may be advanced to any one person shall not be greater than six dollars per one hundred and

sixty acres. The amount so advanced by the county commissioners shall be paid by such county out of its general fund, and charged as taxes against each parcel of land owned by such applicant, or against the personal property owned by applicant.

History: En. Sec. 2, Ch. 153, L. 1919; re-en. Sec. 4496, R. C. M. 1921.

4497. Compensation, statement, and voucher to be charged against said land as taxes. Any person so appointed under the provisions of this article shall receive as compensation the sum of not less than two dollars and fifty cents, or more than four dollars per day for eight hours' labor performed in poisoning and exterminating gophers exclusive of time going to and returning from work. Such person shall make a sworn statement to the county commissioners of the time put in and the poison and grain used on each tract of land; provided, that the maximum charge against any parcel of land containing twenty acres or more shall not be greater in any one year than at the rate of twelve dollars per one hundred and sixty acres, on gophers or twenty-four dollars on one hundred and sixty acres infested by prairie dogs, and the minimum charge shall not be less than one dollar against any parcel of land, which amount shall be paid by such county out of its general fund and charged as taxes against each parcel of land on which the expenses were incurred; provided, that in the case of unpatented land the cost of exterminating gophers or prairie dogs on such land be charged to the personal property of the occupant of such land; provided, further, that before the county commissioners shall charge such amount to the taxes of such person or corporation, they shall give such person or corporation at least twenty days' notice by mail, of the time when and the place at which such amount will be charged against them, and such person or corporation shall have the right to appear and show cause why such amount shall not be charged against their taxes; provided, further, that if such person or corporation shall feel aggrieved by the decision of the county commissioners, such person or corporation may appeal to the district court, and such appeal shall be perfected and prosecuted in the same manner as appeal in justice courts and the county clerk shall enter such amounts upon the tax roll of the county against the land on which such work has been done, and expenses incurred, and the county treasurer of such county shall collect such amounts the same as taxes, and place the same to the credit of the respective counties from which collected.

History: En. Sec. 3, Ch. 153, L. 1919; amd. Sec. 1, Ch. 130, L. 1921; re-en. Sec. 4497, R. C. M. 1921.

4498. "Gopher destruction fund." The board of county commissioners of any county in this state may create a gopher extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of assessed valuation upon all horticultural, farming, and grazing lands in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of gophers in said county; the fund provided to be raised in accordance with this section shall be denominated the "gopher destruction fund," and shall be kept separate and distinct by the county treasurer, and shall be

expended by the board of county commissioners at such time, and in such manner, as is by said board deemed best to secure the abatement and extermination of the gopher pest.

History: Sec. 4, Ch. 153, L. 1919; re-en. Sec. 4498, R. C. M. 1921.

4499. Purchase and furnishing of poison. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poison as the board may deem proper, and may furnish such poison to any person or persons appointed in accordance with the provisions of section 4495 to exterminate gophers, and may also furnish such poison to other persons desiring to use the same for the extermination of gophers, at the actual cost thereof; provided, however, that the cost of such poison shall be paid out of the "gopher destruction fund," and all moneys received from the sale thereof shall be paid into such fund.

History: Sec. 5, Ch. 153, L. 1919; re-en. Sec. 4499, R. C. M. 1921.

4500. "Gopher" defined. The word "gopher" as used in this act shall include striped gopher, flickertail-gopher, pocket-gopher, Columbian ground-squirrel, and prairie dogs.

History: Sec. 6, Ch. 153, L. 1919; re-en. Sec. 4500, R. C. M. 1921.

4501. Destruction insect pests by county commissioners. The board of commissioners of any county of this state, where there are any insect pests, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be, acting under the direction of the state entomologist, to poison, kill, catch, and exterminate insect pests within such county, and any such person so appointed is hereby empowered and directed to enter upon any farm, railroad right of way, grounds or, premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R. C. M. 1921.

References

State ex rel. Case v. Bolles et al., 74 M 54, 69, 238 P 586.

4502. Compensation of appointees—manner of payment. Any person so appointed under the provisions of this act shall receive as compensation the sum of not less than two dollars and fifty cents (\$2.50), or more than four dollars (\$4.00) per day for eight hours labor performed in poisoning, killing, catching and exterminating such insect pests exclusive of time going to and returning from such work. Such person shall make a sworn statement to the county of the time put in and the poison or other means used, which said statement shall be attached to the bill or claim against the county, and warrants in payment thereof drawn on the general fund.

History: En. Sec. 2, Ch. 227, L. 1921; re-en. Sec. 4502, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1923.

References

State ex rel. Case v. Bolles et al., 74 M 54, 69, 238 P 586.

4503. Purchase of poison and equipment—manner of payment. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poisons, traps and other equipment necessary to carry out the provisions of this act to poison, kill, catch or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

History: En. Sec. 3, Ch. 227, L. 1921; re-en. Sec. 4503, R. C. M. 1921; amd. Sec. 2, Ch. 25, L. 1923.

References

State ex rel. Case v. Bolles et al., 74 M 54, 69, 238 P 586.

4504. Tax levy for payment of warrants. The board of county commissioners shall annually determine the amount of such warrants drawn on the general fund for the purposes of this act, and the succeeding year, shall levy a tax for the purpose of insect pest extermination sufficient in amount to reimburse said general fund for the money so paid out on such warrants, which said tax shall be levied upon all the property in the county and shall not exceed one mill on each dollar of assessed valuation. If there be no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants, but in such case the interest shall be computed and added to the amount for which such tax is levied.

History: En. Sec. 4, Ch. 227, L. 1921; re-en. Sec. 4504, R. C. M. 1921; amd. Sec. 3, Ch. 25, L. 1923.

References

State ex rel. Case v. Bolles et al., 74 M 54, 69, 238 P 586.

4505. "Insect pest" defined. The term "insect pest" as used in this act shall include grasshopper, cut-worm, pale western cut-worm, army worm, chinchbug and any other insect generally recognized as a destroyer of grain, hay, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921; re-en. Sec. 4505, R. C. M. 1921.

4506. "Noxious weeds" defined—nuisance. Each of the plants mentioned in this section is hereby declared to be a noxious weed and a common nuisance. No person, copartnership, corporation, or company owning, occupying, or controlling land shall permit any Canada thistle or quack grass to go to bloom thereon.

History: En. Sec. 1, Ch. 168, L. 1921; re-en. Sec. 4506, R. C. M. 1921.

4507. Prohibits against permitting weeds to bloom or seed. For all purposes of this act, the one-half of any road or street lying next to the lands abutting thereon shall be considered part of such land, and no person owning, occupying, or controlling land shall permit any noxious weed to bloom or remain thereon or to produce seed on such land or such adjoining one-half of the highway.

History: En. Sec. 2, Ch. 168, L. 1921; re-en. Sec. 4507, R. C. M. 1921.

4508. Weed commissioner—employment and duties. The board of county commissioners of each county and city council of each municipal corporation are hereby authorized and upon presentation to them of a petition signed by fifty (50) freeholders of the county or twenty-five (25) freeholders of the municipal corporation, as the case may be, may employ a suitable and competent person as weed commissioner for the period between the 15th day of June and the 1st day of October of each year and to provide for his compensation at not to exceed the sum paid to road supervisors or street commissioners, and it shall be the duty of said weed commissioner when appointed to supervise the destruction of noxious weeds and he is hereby empowered to give notices provided for in this act, and cause the provisions hereof to be forced.

History: En. Sec. 3, Ch. 168, L. 1921; re-en. Sec. 4508, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1923.

4509. Inspection of premises—notice to occupant. Where the weed commissioner has knowledge, or on written complain made to any such weed commissioner, that noxious weeds described in this act are growing or standing upon the lands within his jurisdiction, in violation of the law, he shall forthwith inspect the premises and if the complaint be well founded, he shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, in respect thereto within four (4) days after such service.

History: En. Sec. 4, Ch. 168, L. 1921; re-en. Sec. 4509, R. C. M. 1921; amd. Sec. 2, Ch. 60, L. 1923.

4510. Service of notice. All notices herein provided for may be served by any citizen of the county or municipal corporation in which the land is situated; such service shall be upon the occupant, if any there be, otherwise upon the owner or person in charge of the land and shall be by registered letter or person. If there be no person within the county upon whom service can be made, of which the affidavits of the person serving the notice shall be prima facie evidence, the subsequent procedure shall be the same as though service had been had and the notice ignored.

History: En. Sec. 5, Ch. 168, L. 1921; re-en. Sec. 4510, R. C. M. 1921; amd. Sec. 3, Ch. 60, L. 1923.

4511. Destruction of weeds by authorities of notice not observed—collection of cost. If the notice be not obeyed within four (4) days, the weed commissioner of the county or municipal corporation, as the case may be, shall forthwith destroy such weeds and make report thereof to the county clerk or to the city clerk in cities where taxes are collected by the city treasurer, with a verified, itemized account of his services and expenses in so doing, and a description of the lands involved, and shall include in said account his own wages for the time of his necessary employment as well as for men and teams employed, at a rate paid for farm labor per day for man and team for eight hour day. Such expense shall be paid by the county or municipal corporation out of the general funds and unless the sum be repaid by the owner or occupant before October 15th next ensuing, the county clerk, or the city clerk, as the case may be, shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county or city as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered of the owner in a civil action with costs.

History: En. Sec. 6, Ch. 168, L. 1921; re-en. Sec. 4511, R. C. M. 1921; amd. Sec. 4, Ch. 60, L. 1923.

4512. Destruction of weeds mingled with crop. When noxious weeds are so intermixed with a growing crop that the field is a menace to the community, the weed commissioner shall have power to order the destruction of the same or such parts thereof as may be necessary. All officials charged with the enforcement of this act may go upon the lands infested with noxious weeds, or suspected thereof, for any purpose necessary to such enforcement.

History: En. Sec. 7, Ch. 168, L. 1921; re-en. Sec. 4512, R. C. M. 1921; amd. Sec. 5, Ch. 60, L. 1923.

4513. Penalty for violation of act—disposal of fines. Every person who shall violate any of the provisions of this act or refuse to comply with any notice given pursuant thereto, and any officer neglecting to perform any official duty imposed upon him thereby shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or imprisonment in the county jail for not less than five days nor more than three months, or by both such fine and imprisonment. Upon the request of any taxpayer the county attorney shall prosecute any such offender. All fines collected under the provisions of this act shall be paid into the treasury of the county or municipality in which the offense was committed.

History: En. Sec. 8, Ch. 168, L. 1921; re-en. Sec. 4513, R. C. M. 1921.

4513.1. Destruction of noxious weeds by county commissioners. The board of county commissioners of any county in this state may create a noxious weed extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of taxable valuation upon all horticultural, farming, and grazing lands in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of noxious weeds in said county; the fund provided to be raised in accordance with this section shall be denominated the "noxious weed destruction fund," and shall be kept separate and distinct by the county treasurer, and shall be expended by the board of county commissioners at such time, and in such manner, as is by said board deemed best to secure the abatement and extermination of noxious weeds.

History: En. Sec. 1, Ch. 94, L. 1931.

4513.2. Furnishing of materials for extermination of noxious weeds—cost. The board of county commissioners of any county may from time to time, purchase such quantities and amounts of chemicals or other materials as the board may deem proper, and may furnish such chemicals or other materials to any person or persons employed in accordance with the provisions of section 4508 of this code to exterminate noxious weeds, and may also furnish such chemicals or other materials to other persons desiring to use the same for the extermination of noxious weeds at the actual cost thereof; provided, however, that the cost of such chemicals or other materials shall be paid out of the "noxious weed destruction fund," and all moneys received from the sale thereof shall be paid into such fund.

History: En. Sec. 2, Ch. 94, L. 1931.

4513.3. Lease of county fair grounds and buildings, power of commissioners concerning. Boards of county commissioners are hereby authorized to lease for limited periods of time county fair grounds and buildings thereon on such terms as they shall deem proper. In the event same are leased for entertainment purposes the county commissioners shall collect an amount by them deemed proper but not in excess of twenty per centum (20%) of the gross receipts taken in by lessee. Said property shall not be leased unless the lessee shall give a bond such as the board of county commissioners may deem sufficient. No lease shall be executed to permit the use of said premises during any time within three (3) weeks prior to the

holding of a county fair. No lease shall be executed unless the lessee shall agree to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board of county commissioners in case lessee fails to maintain order or to properly police the grounds; provided nothing herein shall be construed to prevent county commissioners to permit schools to use fair grounds for athletic or other public school purposes.

History: En. Sec. 1, Ch. 11, Ex. L. 1933.

4513.4. Disposal of moneys received. All moneys received from the leasing of fair grounds shall be deposited in the poor fund of the county.

History: En. Sec. 2, Ch. 11, Ex. L. 1933.

4514. Power of county commissioners to conduct cemeteries outside corporate limits—joint conduct of cemeteries. The board of county commissioners of any county within the state of Montana is hereby given jurisdiction and power to establish and conduct cemeteries outside of the corporate limits of any city or town, and to acquire lands for said purpose by purchase, condemnation, gift, or devise, and also to acquire by purchase, condemnation, gift, or devise, cemeteries already established and conducted by persons, firms, or corporations other than municipal corporations and are also given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county, and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation other than municipal corporations; provided, that nothing herein contained will permit the interment of bodies of deceased persons in any such cemetery so condemned and taken over as are, under the articles of incorporation or by-laws of such cemetery association or corporation, debarred from burial therein.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R. C. M. 1921.

References

Herrin v. Erickson et al., 90 M 259, 269, 2 P 2d 296.

4515. Board to provide appliances for holding elections, and allow expenses. The board of county commissioners must provide all poll-lists, poll-books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

History: En. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R. C. M. 1921. Cal. Pol. C. Sec. 4064.

4516. Issuance of certificates of election, as board of canvassers. Whenever, as canvassers, the board of county commissioners declares the result of any election held in the county, certificates must be by the clerk of the board issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to elections.

History: En. Sec. 4281, Pol. C. 1895; re-en. Sec. 2940, Rev. C. 1907; re-en. Sec. 4516, R. C. M. 1921. Cal. Pol. C. Sec. 4065.

4517. Power to require attendance of witnesses. The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the

attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

History: En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907; re-en. Sec. 4517, R. C. M. 1921. Cal. Pol. C. Sec. 4067.

4518. Examination of witnesses. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena, or to an order to attend or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of sections 10618 to 10630 of the code of civil procedure.

History: En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907; re-en. Sec. 4518, R. C. M. 1921. Cal. Pol. C. Sec. 4068.

4519. Officers and witnesses not to be prepaid. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907; re-en. Sec. 4519, R. C. M. 1921. Cal. Pol. C. Sec. 4069.

4520. Liability on official bond of commissioner. Any county commissioner who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who wilfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or wilfully, fraudulently, or corruptly attempts to perform an act, as commissioner, unauthorized by law, in addition to the penalty provided in the penal code, forfeits to the county five hundred dollars for every such act, to be recovered on his official bond; and is further liable on his official bond to any person injured thereby for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907; re-en. Sec. 4520, R. C. M. 1921. Cal. Pol. C. Sec. 4086.

NOTE.—Related sections: 4451, 4821.

Operation and Effect

Section 1627 places the specific legal duty upon the board of county commissioners to remove obstructions in a highway, and after notice thereof any member of the board who neglects to do so becomes personally liable under this

section for any injury caused thereby, and they are not relieved of liability by merely instructing the road supervisor to erect and maintain barriers; hence an allegation in the complaint of one who has been injured, to the effect that the board had not instructed the supervisor to erect and maintain barriers, is not required to render the pleading sufficient. *Becker v. Chapple et al.*, 72 M 199, 202 et seq., 232 P 538.

4520.1. Employment of persons to administer relief received from federal agencies. In any county where aid is received from the Reconstruction Finance Corporation or any other similar agencies, the county commissioners of such county shall be authorized to employ the necessary help and incur such expenses as are necessary in the administration of such relief, and in so doing the board of county commissioners may appropriate such funds, as are necessary from the general fund of said county and such

appropriation shall be held and deemed legal and valid notwithstanding the provisions of the budget act.

History: En. Sec. 1, Ch. 44, L. 1933.

CHAPTER 347

CARE OF THE COUNTY POOR

Section 4521.	The board of county commissioners vested with control.
4522.	Relatives to care for poor—penalty for neglect.
4523.	Intemperate person not entitled to support.
4524.	When a person may receive relief from the county.
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4526.	Contracts for care of poor and indigent sick and infirm.
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4530.	Persons falling sick to be cared for.
4531.	Application of persons seeking relief.
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4534.	Poor-farm and workhouse.
4535.	Surplus moneys in poor fund.
4536.	Burial of deceased soldiers, sailors, and marines.
4537.	County of residence to bear expense.
4538.	Persons conducting burial to report expense.
4539.	Duty of county clerk.
4540.	Person conducting burial not to receive compensation.
4541.	Act not to apply to inmates of soldiers' home and non-residents.

4521. The board of county commissioners vested with control. The board of county commissioners are vested with entire and exclusive superintendence of the poor.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Statutes; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 1, p. 51, L. 1876; re-en. Sec. 955, 5th Div. Rev. Stat. 1879; re-en. Sec. 1609, 5th Div. Comp. Stat. 1887; re-en. Sec. 3200, Pol. C. 1895; re-en. Sec. 2050, Rev. C. 1907; re-en. Sec. 4521, R. C. M. 1921.

Operation and Effect

Held that in enacting this section relative to the care by counties of their indi-

gent sick, poor and infirm, the policy of the legislature has been to impose a wide discretion in the county commissioners and that, in carrying out such policy, their power is not limited to placing the poor in the county poorhouse, where there is one, or to contract for their maintenance, but may, if they deem it proper, extend aid in the shape of fuel, groceries, clothing or by small doles of money, at their respective places of residence. *Jones v. Cooney et al.*, 81 M 340, 263 P 429.

4522. Relatives to care for poor—penalty for neglect. Every person without means, who is unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, must be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they, or either of them, be of sufficient ability, in the order named; and every person who fails or refuses to support his or her father, grandfather, mother, grandmother, child, sister, or brother, in the order named, when directed by the board of county commissioners of the county where such poor person is found, whether such relative reside in the county or not, must pay to the county, for the use of such person, the sum of thirty dollars per month, which may be recovered in the name of the county.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 2, p. 51, L. 1876; re-en. Sec. 956, 5th Div. Rev. Stat. 1879; re-en. Sec. 1610, 5th Div. Comp. Stat. 1887; re-en. Sec. 3201, Pol. C. 1895;

re-en. Sec. 2051, Rev. C. 1907; re-en. Sec. 4522, R. C. M. 1921.

References

Jones v. Cooney et al., 81 M 340, 263 P 429.

4523. Intemperate person not entitled to support. When any person becomes poor from intemperance or other vice, he is not entitled to any support from relatives, except from parent or child.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 3, p. 51, L. 1876; re-en. Sec. 957, 5th Div. Rev. Stat. 1879; re-en. Sec. 1611, 5th Div. Comp. Stat. 1887; re-en. Sec. 3202, Pol. C. 1895;

re-en. Sec. 2052, Rev. C. 1907; re-en. Sec. 4523, R. C. M. 1921.

References

Jones v. Cooney et al., 81 M 340, 263 P 429.

4524. When a person may receive relief from the county. When such person does not have the relatives mentioned in section 4522 of this code, in any county, or such relatives are not able, or fail or refuse to maintain such person, then he must receive relief from the county, as hereinafter provided.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 4, p. 52, L. 1876; re-en. Sec. 958, 5th Div. Rev. Stat. 1879; re-en. Sec. 1612, 5th Div. Comp. Stat. 1887; re-en. Sec. 3203, Pol. C. 1895; re-en. Sec. 2053, Rev. C. 1907; re-en. Sec.

4524, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1933.

References

Jones v. Cooney et al., 81 M 340, 263 P 429.

4524.1. Relief to be worked out by able bodied male, when. Where there is an able bodied male person in the family applying for relief, the relief given in money or otherwise, must, when the board of county commissioners so require, be worked out at the prevailing rate of wages for the particular class of labor performed on all unbudgeted governmental work as may be designated by the board of county commissioners, as emergency relief work.

History: En. Sec. 2, Ch. 19, L. 1933.

4525. Care of county poor and indigent sick and infirm—letting of contracts by commissioners. The board of county commissioners may, at its regular meeting in August of each year, make an order directing the clerk of the board to publish a notice in a newspaper inviting sealed proposals for the care, support and maintenance of the poor of the county per capita by the week for a period of one year, said proposals to include the entire cost of feeding, clothing and maintaining the county poor; and inviting sealed proposals for the care, support and maintenance of the indigent sick and infirm of the county for a period of one year, said proposals to include the entire cost of feeding, clothing, hospital care and nursing for such indigent sick and infirm and Christian and respectable burial expenses. Such notice must be published once a week for four successive weeks in the official newspaper of the county.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 5, p. 52, L. 1876; re-en. Sec. 959, 5th Div. Rev. Stat. 1879; re-en. Sec. 1613, 5th Div. Comp.

Stat. 1887; re-en. Sec. 3204, Pol. C. 1895; re-en. Sec. 2054, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1909; re-en. Sec. 4525, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1933.

Operation and Effect

The several provisions of the statute, relating to the care of county charges, are to be construed together. *State ex rel. Stuewe v. Hindson*, 44 M 429, 439, 120 P 485.

Id. There is a manifest contradiction of terms in this section, but when read in connection with section 4526, it is evident that it was the intention of the legislature

that bids should be asked for one year only, and that any contract made by the board of county commissioners for the care of the poor should run but one year.

References

Cited or applied as section 2054, revised codes as amended, in *Albers v. Barnett*, 53 M 71, 75, 161 P 521; *Jones v. Cooney et al.*, 81 M 340, 346, 263 P 429.

4526. Contracts for care of poor and indigent sick and infirm. Separate proposals may be made for the care, support and maintenance of the county poor, and for the care and maintenance of the indigent sick and infirm of the county, and such proposals shall be addressed to the clerk of the board. The board may annually, at its September meeting, award a contract for the care, support and maintenance of the county poor for the ensuing year to the lowest responsible bidder or bidders therefor, and may also award a contract for the care and maintenance of the indigent sick and infirm of the county for the ensuing year to the lowest responsible bidder or bidders therefor; provided, that if the lowest responsible bidder or bidders for the care, support and maintenance of the county poor shall also be the lowest responsible bidder or bidders for the care and maintenance of the indigent sick and infirm of the county, both of such contracts may be awarded to such bidder or bidders; and provided further, that if a county owns a county poor farm, with suitable buildings of sufficient size to care for the poor and indigent sick and infirm of the county, the county commissioners of such county may employ some suitable person as superintendent of such poor farm, and the county may maintain the said poor and indigent sick and infirm at said farm at the expense of such county. Such superintendent shall at all times be under the control of and subject to the orders of the board of county commissioners, and may be removed by them at any time.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, *Bannack Stat.*; re-en. Secs. 1, 2 and 4, p. 535, *Cod. Stat.* 1871; Sec. 6, p. 52, L. 1876; re-en. Sec. 960, 5th Div. Rev. Stat. 1879; re-en. Sec. 1614, 5th Div. Comp. Stat. 1887; re-en. Sec. 3205, Pol. C. 1895; re-en. Sec. 2055, Rev. C. 1907; amd. Sec. 2, Ch. 29, L. 1909; amd. Sec. 1, Ch. 45, L. 1911; re-en. Sec. 4526, R. C. M. 1921; amd. Sec. 2, Ch. 50, L. 1933.

Operation and Effect

For a decision concerning the validity of a contract entered into by the board of county commissioners for the care of the poor under former statutes, see *Lebecher v. Commrs. of Custer Co.*, 9 M 315, 23 P 713.

The board of county commissioners having the power, under section 4528, to reject all bids, no absolute duty is imposed upon it to accept the lowest responsible bid, and hence mandamus does not lie, either at the suit of an unsuccessful bid-

der or a taxpayer, to coerce the board to let the contract to the lowest responsible bidder. *State ex rel. Stuewe v. Hindson*, 44 M 429, 440, 120 P 485.

Id. The letting of contracts to the lowest bidder is for the benefit of the public; the provision requiring it does not confer any right upon the lowest bidder as such; but an unsuccessful bidder may, as a taxpayer, invoke the aid of a court, by mandamus, to compel action by the board, where it has failed to act.

Id. In advertising for bids for two years, and in assuming to let a contract to the highest bidder, the board exceeds its authority.

Id. A contract fraudulently let is a nullity.

References

Jones v. Cooney et al., 81 M 340, 347, 263 P 429.

4527. Contract for medicines and medical attendance. The board must annually, at their December meeting, make a contract with some resident

practicing physician to furnish medical attendance to the sick, poor, and infirm of the county, and to the inmates of the county jail, and must also make provision for the furnishing of medicine to the same; provided, however, that the board may let such contract for the furnishing of medical attendance to the physician appointed by such board as county health officer, and may fix a salary or other rate of compensation to be paid to such county health officer for the furnishing of such medical attendance, which salary or other compensation shall be in addition to the salary of such physician as county health officer. Said board may also, when in its judgment the interests of the county require, appoint a deputy county health officer who need not be a resident of the county but who shall be located at a point where he can serve people living in a portion of said county adjacent to his point of residence. The boards of county commissioners of two or more adjacent counties may also, when in their opinion the needs of the county poor living at a distance from the residence of the county health officer, will be better served by such an arrangement, unite in employing a special deputy county health officer whose duty it shall be to attend to the needs of the county poor in any designated part of said adjacent counties.

The county commissioners of the several counties uniting in such an arrangement shall fix the compensation of such special deputy and such several counties shall bear the cost of same on some equitable division.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 7, p. 53, L. 1876; re-en. Sec. 961, 5th Div. Rev. Stat. 1879; re-en. Sec. 1615, 5th Div. Comp.

Stat. 1887; re-en. Sec. 3206, Pol. C. 1895; re-en. Sec. 2056, Rev. C. 1907; amd. Sec. 1, Ch. 31, L. 1917; re-en. Sec. 4527, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1927.

4528. Board may reject any bid. The board may reject the bid of and refuse to contract with any person whom they deem unsuitable as a contractor under the next three preceding sections.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 8, p. 53, L. 1876; re-en. Sec. 962, 5th Div. Rev. Stat. 1879; re-en. Sec. 1616, 5th Div. Comp. Stat. 1887; re-en. Sec. 3207, Pol. C. 1895; re-en. Sec. 2057, Rev. C. 1907; re-en. Sec. 4528, R. C. M. 1921.

Operation and Effect

The authority of the board to reject all bids is necessarily implied; and, if the situation warrants it, the board may readvertise. State ex rel. Stuewe v. Hindson, 44 M 429, 440, 120 P 485.

4529. Bond of contractor—duty of physician to examine and notify contractor. Any person with whom any such contract is made must execute a bond to the state in a sum not less than one thousand nor more than five thousand dollars, with two or more sureties, conditioned for the faithful performance of his contract; said bond to be approved by and filed with the chairman of the board. It is the duty of the physician with whom the contract for medical attendance is made to examine each week any person who is a charge upon the county, and if, after such examination, he is satisfied that such person is able to support and maintain himself, he must so notify the contractor having the person in charge, by leaving with the contractor a notice of the fact that such person requires no further medical attendance, and file a duplicate thereof with the clerk of the board. After the serving of said notice and filing the duplicate thereof

with the clerk, the person mentioned therein ceases to be a charge upon the county.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R. C. M. 1921.

4530. Persons falling sick to be cared for. When any non-resident without means is sick within any county in this state, and not able to pay his board, nursing, or medical attendance, the board must, on application being made, give assistance to such person as is necessary, and if the person dies, the board must give him a decent burial, and make allowance for the expenses incurred and order the same to be paid out of the county treasury.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 10, p. 54, L. 1876; re-en. Sec. 964, 5th Div. Rev. Stat. 1879; re-en. Sec. 1618, 5th Div. Comp. Stat. 1887; re-en. Sec. 3209, Pol. C. 1895; re-en. Sec. 2059, Rev. C. 1907; re-en. Sec. 4530, R. C. M. 1921.

4531. Application of persons seeking relief. Any person seeking relief must make application to any member of the board, who, may grant an order for temporary relief, but before granting any permanent order for relief, must require satisfactory evidence that he has been a resident of the county for one (1) year immediately preceding the day upon which application is made and properly sign a document permitting the county and its representatives to investigate their financial condition in any way it, or they, see fit, including inquiry of individuals, banks, building and loan associations, insurance companies, United States postal savings department and request and authorize any and every individual, institution and department to impart unto said county or its representatives any information it, or they, may desire.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 11, p. 54, L. 1876; re-en. Sec. 965, 5th Div. Rev. Stat. 1879; re-en. Sec. 1619, 5th Div. Comp. Stat. 1887; re-en. Sec. 3210, Pol. C. 1895; re-en. Sec. 2060, Rev. C. 1907; re-en. Sec. 4531, R. C. M. 1921; amd. Sec. 1, Ch. 91, L. 1931; amd. Sec. 1, Ch. 19, Ex. L. 1933.

4532. Persons belonging to another county to be removed. When application is made, if it appears to the satisfaction of the board that the person applying has resided in the county for one (1) year, he is entitled to the relief provided by this chapter; but if on examination it appears that the applicant is a resident of some other county of the state, the board may provide him with transportation funds to move to the county of which he is a resident.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 12, p. 54, L. 1876; re-en. Sec. 966, 5th Div. Rev. Stat. 1879; re-en. Sec. 1620, 5th Div. Comp. Stat. 1887; re-en. Sec. 3211, Pol. C. 1895; re-en. Sec. 2061, Rev. C. 1907; re-en. Sec. 4532, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1931; amd. Sec. 2, Ch. 19, Ex. L. 1933.

4533. Non-residents furnished temporary relief. Persons who have not been resident of a county one (1) year may be furnished relief by the commissioners in cases of extreme necessity and destitution.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 13, p. 55, L. 1876; re-en. Sec. 967, 5th Div. Rev. Stat. 1879; re-en. Sec. 1621, 5th Div. Comp. Stat. 1887; re-en. Sec. 3212, Pol. C. 1895; re-en. Sec. 2062, Rev. C. 1907; re-en. Sec. 4533, R. C. M. 1921; amd. Sec. 3, Ch. 91, L. 1931; amd. Sec. 3, Ch. 19, Ex. L. 1933.

4534. Poor-farm and workhouse. The board may purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty acres, to be known as a poor-farm, and to erect thereon suitable workhouses for the use, health, and employment of all persons as are a county charge, and the poor-farm, with the workhouses and the persons who are a county charge, must be under such rules and regulations as the board orders. It may also provide for the care, support, and maintenance of the sick, poor, and infirm of the county upon the poor-farm.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 14, p. 55, L. 1876; re-en. Sec. 968, 5th Div. Rev. Stat. 1879; re-en. Sec. 1622, 5th Div. Comp. Stat. 1887; re-en. Sec. 3213, Pol. C. 1895; re-en. Sec. 2063, Rev. C. 1907; re-en. Sec. 4534, R. C. M. 1921.

References

Jones v. Cooney et al., 81 M 340, 345, 263 P 429.

4535. Surplus moneys in poor fund. Any surplus that may accumulate in the poor fund of the county may be set apart and applied to the purposes of the next preceding section.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 15, p. 56, L. 1876; re-en. Sec. 969, 5th Div. Rev. Stat. 1879; re-en. Sec. 1623, 5th Div. Comp. Stat. 1887; re-en. Sec. 3214, Pol. C. 1895; re-en. Sec. 2064, Rev. C. 1907; re-en. Sec. 4535, R. C. M. 1921.

4536. Burial of deceased soldiers, sailors, and marines. It shall be the duty of the board of county commissioners of each county in this state to designate some proper person in the county, preferably an honorably discharged soldier, sailor, or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, marine, or nurse who shall have served in the army, navy, marine corps, or army nurse corps of the United States, or any inmate or member of the Montana soldiers' home, who may hereafter die; such burial shall not be made in any burial grounds or cemetery, or in any portion of such burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, the expense of each burial shall not exceed the sum of one hundred and fifty dollars (\$150.00), unless such female be an honorably discharged nurse who shall have served in the army or navy of the United States, to be paid by the county commissioners of the county in which the deceased resided at the time of his death; providing, the expense of each burial of a female inmate or member of the Montana soldiers' home, shall not exceed the sum of one hundred dollars (\$100.00), to be paid by the county commissioners of the county in which the deceased person resided prior to her admittance to the Montana soldiers' home.

In the event any honorably discharged soldier, sailor, marine or nurse, who shall have served in the army or navy of the United States, (or any inmate or member of the Montana soldiers' home) and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided in cases where death occurs in the county of deceased's residence, and the person appointed in the county of which said deceased was a resident as hereinbefore provided,

may take charge of said burial in the same manner as he would, had such deceased person died within the county of his residence.

Whenever any soldier, sailor, marine, nurse or inmate hereinbefore described shall die at the state soldiers' home, or at any public institution of the state of Montana, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state soldiers' home, or of any public institution of the state of Montana, as aforesaid, shall provide the proper burial herein prescribed, providing that the expense of each burial shall not exceed the sum herein provided for, which expense shall be paid by the county in which he or she resided at the time of his entry into such home or institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed to the disparagement of decent and proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1931.

4537. County of residence to bear expense. The expenses of such burial shall be paid by the county in which such soldier, sailor, or marine dies, but if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R. C. M. 1921.

4538. Person conducting burial to report expense. It shall be the duty of the person appointed as provided in section 4536 of this code to cause such deceased person to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the name, rank, or command, so far as is known, to which the deceased belonged, as such soldier, sailor, or marine, the date of death, place of burial, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911; re-en. Sec. 4538, R. C. M. 1921.

4539. Duty of county clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor, or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of ten dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 4537 of this code for the burial expenses.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R. C. M. 1921.

4540. Person conducting burial not to receive compensation. The person appointed as provided in section 4536 of this code shall not receive any compensation for any duties he may perform in compliance with this act.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R. C. M. 1921.

4541. Act not to apply to inmates of soldiers' home and non-residents. This act shall not apply to such soldiers, sailors or marines as may hereafter die in the State Soldiers' Home in this state, and this act shall not apply to such soldiers, sailors or marines who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. 4541, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1931.

CHAPTER 348

COUNTY FARM BUREAUS

Section 4542. Corporation may be organized as county farm bureaus.

4543. How bureau shall be incorporated.

4544. Certificate fee only to be paid.

4542. Corporation may be organized as county farm bureaus. A corporation to be known as the county farm bureau may be organized in any county, to develop and to carry out a county program of work in co-operation with the board of county commissioners of said county, the Montana state college of agriculture and mechanic arts of the university of Montana, and the United States department of agriculture, for the advancement of agriculture and home economics, the promotion of better understanding between the citizenship of town and country and the development of a wholesome community life.

History: En. Sec. 1, Ch. 14, L. 1919; re-en. Sec. 4542, R. C. M. 1921.

4543. How bureau shall be incorporated. Such corporation shall be incorporated in the manner and under the provisions of law applicable to the corporations specified and authorized to be organized under the provisions of sections 6453 to 6458 of these codes.

History: En. Sec. 2, Ch. 14, L. 1919; re-en. Sec. 4543, R. C. M. 1921.

4544. Certificate fee only to be paid. No other fee than the usual certificate fee shall be required to be paid to any county or state officer for filing of such articles of incorporation.

History: En. Sec. 3, Ch. 14, L. 1919; re-en. Sec. 4544, R. C. M. 1921.

CHAPTER 349

COUNTY FAIRS

Section 4545. County fair commission—appointment—term—qualifications.

4545.1. Powers of commission—preference in appointments.

4546. Duties of commission.

4547. Organization of commission.

4548. Compensation of members.

4549. Appropriation and tax levy for county fairs.

4550. Disbursement of appropriation—acquisition of lands—appropriation for exhibits at fairs.

- 4550.1. Creation of fair districts—notice and hearing.
- 4550.2. Board of directors of fair district.
- 4550.3. Powers of directors—meetings—officers—records and accounts.
- 4550.4. Secretary and treasurer to be appointed—acquisition of property—powers generally of directors.
- 4550.5. Budget for district fairs—consideration by county commissioners—tax levy—district fairs fund—expenditures.
- 4550.6. Ownership of district fair property.
- 4550.7. Additions of counties to fair districts.

4545. County fair commission—appointment—term—qualifications. The board of county commissioners of each county of Montana may, at their regular meeting in December in 1927, appoint from the electors of their respective counties, five responsible persons to constitute a county fair commission, three of said members to be appointed for a term of two years, and two for a term of one year, and until their successors are appointed. At the regular meeting in December in each year thereafter, the said board of county commissioners of each county shall appoint members of the said county fair commission to succeed the members whose terms then expire, such appointments to be for a term of two years. Such persons shall be well qualified to perform the duties of organizing and successfully carrying on the county fair.

History: En. Sec. 1, Ch. 67, L. 1903; re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935.

4545.1. Powers of commission—preference in appointments. Said county fair commissioners shall have control and operation of the fair and the supervision and management of the fair grounds and also the leasing of buildings and fair grounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same.

In case there is in any county a fair association, horticultural or agricultural society, the board of county commissioners may appoint said fair commission from the members of said fair association, horticultural or agricultural society, giving preference in said appointment to the officers of the said association or societies.

History: En. Sec. 2, Ch. 52, L. 1935.

4546. Duties of commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties, and shall have charge of all fair grounds and fair property.

History: En. Sec. 4, Ch. 67, L. 1903; re-en. Sec. 2930, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4546, R. C. M. 1921.

4547. Organization of commission. Said commission shall organize by electing one of its members president and one of its members vice-president, and the county treasurer shall be ex-officio the treasurer. The secretary shall be appointed by the commission, and may be a member of the commission; provided, that should he be a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of twenty-five dollars a year, as provided for in this act.

History: En. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4547, R. C. M. 1921.

4548. Compensation of members. Each member of the said commission shall receive a salary of twenty-five dollars a year as compensation for his

services. In addition thereto, the said commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office.

History: En. Sec. 3, Ch. 67, L. 1903; re-en. Sec. 2929, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1917; re-en. Sec. 4548, R. C. M. 1921.

4549. Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed two thousand five hundred dollars (\$2,500.00), to be expended by the county fair commission for the purpose of holding a county fair, or advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half ($1\frac{1}{2}$) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, and maintaining a county fair, including the purchase of land for such purpose, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1927.

4550. Disbursement of appropriation—acquisition of lands—appropriation for exhibits at fairs. The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer, and shall hereafter be paid out by the said treasurer on orders signed by the president and secretary of the said fair commission.

The board of county commissioners of any county in the state of Montana may purchase, receive by donation, or own and hold a tract of land in their respective counties, not exceeding one hundred sixty acres, as county fair grounds, which land may be used by the county fair commission for the purpose of promoting the interests of horticulture, agriculture and stockraising. The board of county commissioners who shall avail themselves of the foregoing provisions may purchase, erect, construct and maintain permanent improvements on such county fair grounds.

The board of county commissioners appropriating money for exhibits at the state fair of each county is hereby authorized to appropriate each year the sum of one thousand dollars, or as much thereof as may be necessary, out of the general fund of the county for the purpose of defraying the expenses of collecting, transporting to the state fair and taking care of any exhibit from such county at the said state fair; such money to be expended under the direction of the board of county commissioners.

The board of county commissioners of any county in Montana may appropriate each year the sum of two hundred dollars, or so much thereof as may be necessary, out of the general funds of the county, for the purpose of defraying the expenses of collecting, transporting, and taking care of any exhibit from such county at any county agricultural fair, seed show, or other agricultural exhibition held within the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R. C. M. 1921.

4550.1. Creation of fair districts—notice and hearing. Two (2) or more counties within the state constituting a contiguous territory, may group themselves together and form a fair district. The board of county commissioners of any such county, upon application from the regularly appointed county fair board, may by resolution declare its intention to join in and form a fair district. Notice of such resolution shall be published in two (2) regular weekly issues of a newspaper in such county, setting forth the date on which a hearing shall be had on said resolution by the taxpayers of the county and objections heard, if any there are thereto. After the consideration of the objections, if any be made, the county commissioners may authorize the county fair board to join with any existing contiguous district and/or form a fair district with counties in contiguous territory.

History: En. Sec. 1, Ch. 178, L. 1931.

4550.2. Board of directors of fair district. The members of the respective county fair boards of the counties forming a fair district shall ex-officio constitute a board of directors for said fair district; and after a district has been formed and a county or counties are added thereto the members of the county fair board or boards of the county or counties added to the fair district shall likewise be ex-officio members of the board of directors of said fair district.

History: En. Sec. 2, Ch. 178, L. 1931.

4550.3. Powers of directors—meetings—officers—records and accounts. The board of directors shall be charged with the care and custody of all property of the district fair. They shall designate a place within the fair district where the fair grounds shall be located and this place shall thereafter be the place of business of said district. They shall meet at this place of business during the month of December of each year and organize; electing a chairman, vice-chairman and secretary for the board. Such subsequent meetings shall be held as may be found necessary for the conduct of the district fair. They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district. They shall see that all records and accounts are properly kept, supervised and approved; that proper vouchers evidence all disbursements of money; that the records are at all reasonable hours open to the tax payers of the counties comprising the district.

History: En. Sec. 3, Ch. 178, L. 1931.

4550.4. Secretary and treasurer to be appointed—acquisition of property—powers generally of directors. The board of directors shall have power to employ a secretary, whom they may vest with managerial powers; they shall also appoint a treasurer. The office of secretary may be combined in the same person with that of treasurer. They shall have power to acquire for the benefit of the district, such property, real and personal, as may be required in connection with the conduct of district fairs. They shall have power to do everything necessary in connection with the holding of the annual district fair, including the employment of labor, awarding of prizes, making of exhibition contracts, charging admission and entrance fees, and everything that is necessary in conducting the business of the district. They

shall fix the salaries of all employees and prescribe the time and manner of payments. They shall be vested with the general powers granted commissioners of county fairs.

History: En. Sec. 4, Ch. 178, L. 1931.

4550.5. Budget for district fairs—consideration by county commissioners—tax levy—district fair fund—expenditures. Aside from the revenue derived from annual fairs or other exhibitions conducted, the necessary revenue shall be raised as follows: The board of directors shall meet during the first week of May of each year, and shall make a budget of the amounts required in the conduct of the affairs of the district, for the following year and shall deduct therefrom the probable income from the annual district fair and other exhibitions to be held by said district during the following year, and shall then apportion the remaining balance among the various counties forming said district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year; save in the case of the county in which the fair is being conducted, in which county the levy may, by mutual agreement of the directors, be made larger than in other counties comprising the district, and the secretary shall certify to each board of county commissioners the amount of said budget and the amount of revenue to be raised by such county for such purposes, and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in said district on or before the first day of June of each year. The respective boards of county commissioners of the counties comprising said district, shall meet in joint assembly with their county fair commissioners during the first week of June of each year and shall jointly consider the budget proposed by the board of directors of the district, and shall give such approval or suggest such amendments or modifications as to them may seem proper and desirable.

If the county commissioners shall fail to hold such joint meeting, or shall fail to take any action, then the budget, certified by the secretary of the fair district shall be, without further action, deemed approved, and the sums of money apportioned to the county shall be the sums to be raised by special levy for said purpose. For the purpose of raising the aforesaid revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective counties; provided however, that the said levy shall not exceed one (1) mill on the dollar of the assessed valuation of all the taxable property in the county; except in the case of the county in which the fair is being conducted, in which county the levy shall not exceed one and one-half ($1\frac{1}{2}$) mills on the dollar of taxable property in the county; in addition thereto any and all moneys available to the holding of county fairs may be allotted and transferred to the use of the district fair as the respective county fair commissioners may elect; the funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and by him and credited to a fund to be known as the district fair fund, held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or

the vice-chairman and the secretary of the district fair board; provided that the treasurer of the county in which the district fair shall be held shall carry the moneys received from the various counties in the district in the regular county fair fund in the same manner as regular county fair moneys, payable, however, only on district fair warrants.

History: En. Sec. 5, Ch. 178, L. 1931.

4550.6. Ownership of district fair property. The ownership of the real or personal property acquired by the fair district shall be vested in the joint ownership of the counties comprising the district, or in one (1) county for the benefit of the district, as may be provided for by the board of directors.

History: En. Sec. 6, Ch. 178, L. 1931.

4550.7. Additions of counties to fair districts. A contiguous county or counties forming a territory contiguous to a fair district may be added to such fair district after its formation under the same provisions as set forth in section one of this act; provided the board of directors of the fair district determine that it is to the best interest of said district that such county or counties be added.

History: En. Sec. 7, Ch. 178, L. 1931.

CHAPTER 350

STATE ATHLETIC COMMISSION

- Section 4551. State athletic commission—appointment and term of members—compensation and expense—meetings—chairman—seal—quorum.
- 4552. Secretary of commission—duties—limitation on salary and expense—annual report of commission to governor.
- 4554. Jurisdiction over boxing and sparring matches—licenses—application for license.
- 4555. Construction and equipment of buildings.
- 4556. Duration of bouts—glove specifications—physical examination of participants.
- 4557. Forfeiture of license for conducting fake bouts.
- 4558. Penalty for participating in fake bouts.
- 4559. Report of ticket sales—tax on gross receipts—moneys paid into veterans' memorial fund—expenditures—investment.
- 4560. Bond of applicant for license.
- 4561. Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax.
- 4562. Violations constitute misdemeanor.
- 4562.1. Transfers to veterans' memorial fund.
- 4562.2. Interest to be credited to veterans' memorial fund.
- 4562.3. Investment of fund.

4551. State athletic commission—appointment and term of members—compensation and expense—meetings—chairman—seal—quorum. There is hereby created an athletic commission to be known as the state athletic commission, consisting of three persons, to be appointed by the governor. One of said persons shall be appointed for a period of one year from and after the first of March, following his appointment, and one for a period of three years from and after the first of March, following his appointment, and upon the expiration of the terms of such respective commissioners, the governor shall appoint their successors, each to serve for a term of three years, and all to serve until their successors are appointed and qualified. The members of the commission shall serve without compensation but shall be allowed

necessary expenses, to be paid by the state treasurer on warrant properly drawn out of the proceed of the tax to be collected as hereinafter provided. The commission shall maintain general offices for the transaction of its business at a place to be by them designated. The members of the commission shall, at their first meeting after their appointment, and on or before the first day of April of each year thereafter, elect one of their number chairman of the commission, shall adopt a seal for the commission and may make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. Two of the members of the commission shall constitute a quorum to do business; and the concurrence of at least two commissioners shall be necessary to render a choice or decision by the commission.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R. C. M. 1921; amd. Sec. 1, Ch. 103, L. 1927.

4552. Secretary of commission—duties—limitation on salary and expense—annual report of commission to governor. The commission shall appoint, and at its pleasure remove, a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by the commission and to perform such other duties as the commission may prescribe; and he may under the direction of the commission issue subpoenas for the attendance of witnesses before the commission and may, under direction of the commission, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. The necessary traveling and other necessary expenses, including the salary of the secretary not exceeding twenty-five dollars (\$25.00) per month, which shall be determined by the commission, shall be paid monthly by the state treasurer on warrant properly drawn out of the proceeds of the tax to be collected as herein provided. The commission shall annually make to the governor a full report of its proceedings for the year ending with the first day of January, and may submit, with such reports, such recommendations pertaining to its affairs as to it shall seem desirable.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R. C. M. 1921; amd. Sec. 2, Ch. 103, L. 1927.

4553. Repealed—Chapter 103, laws of 1927.

4554. Jurisdiction over boxing and sparring matches—licenses—application for license. The commission shall have, and hereby is invested with, the sole direction, management, and control and jurisdiction over all boxing and sparring matches and exhibitions to be conducted, held or given within the state and by any club, corporation or association; and no boxing or sparring match or exhibition shall be conducted, held or given within the state except pursuant to its authority and in accordance with the provisions of this act. The commission may, in its discretion, issue, and at its pleasure revoke, a license to conduct, hold or give boxing and sparring matches and exhibitions to any club, corporation or association, and which, if it be an amateur athletic association, may be incorporated or organized in accordance

with the rules as may be prescribed by the commission. Nothing in this act shall be construed as relating to or prohibiting amateur boxing or wrestling exhibitions conducted in and by regularly organized amateur clubs, schools and gymnasiums. Every license shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe. Every application for a license, as herein provided for, shall be in writing and shall be addressed to the commission and shall be verified by such officer of the club, corporation or association on whose behalf the application may be made. It shall contain a recital of such facts as, under the provisions hereof, will show the applicant entitled to receive a license, and in addition thereto, such other facts and recitals, as the commission may by rules require to be shown.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R. C. M. 1921; amd. Sec. 3, Ch. 103, L. 1927.

4555. Construction and equipment of buildings. All buildings or structures used or intended to be used, for the purpose of this act, shall be properly ventilated and provided with fire exits and fire escapes, if there need be, and in all manner conform to the law, ordinances and regulations pertaining to buildings in the city, town, or village where situated. Where a part of a building or structure is used for the purpose set forth in this act, this section shall apply in the same manner.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4555, R. C. M. 1921; amd. Sec. 4, Ch. 103, L. 1927.

4556. Duration of bouts—glove specifications—physical examination of participants. No boxing or sparring match or exhibition shall be of more than fifteen rounds in length; and the contestants shall wear during such contests, gloves weighing at least six ounces. Provided, also, that no person or persons may take part in an exhibition or sparring match unless they have first passed a rigorous physical examination to determine their fitness to engage in any such exhibition. Said examination to be conducted by a regular practicing physician, said physician to be designated by the commission.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R. C. M. 1921; amd. Sec. 5, Ch. 103, L. 1927.

4557. Forfeiture of license for conducting fake bouts. Any club, corporation or association which may conduct, hold or give, or participate in, any sham or fake boxing or sparring match or exhibition shall thereby forfeit license issued in accordance with the provisions of this act, which shall therefor be, by the commission, cancelled and declared void; and it shall not thereafter be entitled to receive another such or any license pursuant to the provisions of this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R. C. M. 1921; amd. Sec. 6, Ch. 103, L. 1927.

4558. Penalty for participating in fake bouts. Any contestant who shall participate in any sham or fake boxing or sparring match or exhibition shall

be penalized in the following manner: For the first offense, he shall be restrained for a period of six months, such period to begin immediately after the occurrence of such offense, from participating in any competition to be held or given by any club, corporation or association duly licensed to give or hold such boxing or sparring match or exhibition; for the second offense he shall be totally disqualified from further admission or participation in any boxing contest held or given by any club, corporation or association duly licensed for said purpose.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4558, R. C. M. 1921; amd. Sec. 7, Ch. 103, L. 1927.

4559. Report of ticket sales—tax on gross receipts—moneys paid into veterans' memorial fund—expenditures—investment. Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall within twenty-four hours after the determination of every contest furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of gross proceeds thereof, and such other matters as the commission may prescribe, and shall also with the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts from the sale of the tickets of admission to such boxing or sparring match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commission, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in a separate and special fund to be designated the "veterans' memorial fund," and used exclusively for the purposes herein provided. The monies so received and held by the state treasurer in such special fund shall be used and devoted for the expenses above specified and the balance to be held and retained exclusively for the erection and maintenance of a suitable veterans' memorial building. Such funds to be drawn upon and expended only upon proper and legal claims made against the fund, first presented and approved by the state board of examiners. All money in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state monies.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R. C. M. 1921; amd. Sec. 8, Ch. 103, L. 1927.

4560. Bond of applicant for license. Before any license shall be granted to any club, corporation, or association to conduct, hold or give any boxing or sparring match or exhibition, such applicant therefore shall execute and file with the state treasurer a bond in the sum of five thousand dollars (\$5000.00) payable to the state of Montana, to be approved as to form by the attorney general of the state of Montana, and as to the sufficiency of the sureties thereon by the commission, which said bond shall be conditioned upon the payment of the tax hereby imposed. Upon the filing and approving of such bond, the commission shall issue to such applicant a license as hereinbefore provided.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R. C. M. 1921; amd. Sec. 9, Ch. 103, L. 1927.

4561. Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax. Whenever any such club, corporation or association shall fail to make a report of any contest at the time prescribed by this act or whenever such report is unsatisfactory to the commission, it may examine or cause to be examined the books and records of such club, corporation or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for any contest and the amount of tax due pursuant to the provisions of this act, which tax he may, upon and as the result of such examination, fix and determine. In case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, for a period of twenty days after notice to such delinquent club, corporation or association of the amount at which the same may be fixed by the commission, such delinquent shall ipso facto, forfeit its license and shall be thereby disqualified from receiving any new license or any renewal of license; and it shall in addition forfeit to the state of Montana the sum of five hundred dollars (\$500.00), which may be recovered by the attorney general in the name of the state of Montana in the same manner as other penalties are by law recovered, and when collected shall be used and applied as other monies received under the provisions hereof.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R. C. M. 1921; amd. Sec. 10, Ch. 103, L. 1927.

4562. Violations constitute misdemeanor. Any person who violates any of the provisions of this act, for which a penalty is not herein expressly prescribed, shall be guilty of a misdemeanor.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4562, R. C. M. 1921; amd. Sec. 11, Ch. 103, L. 1927.

4562.1. Transfers to veterans' memorial fund. All monies which have heretofore been collected and received by the state treasurer and by him credited to the "soldiers' and sailors' home fund," amounting at this time to the sum of eleven thousand ninety-eight dollars and six cents (\$11,098.06), are hereby ordered and directed to be transferred by the state treasurer to the "veterans' memorial fund," and there kept and held for the erection and maintenance of a veterans' memorial building, and for other expenditures authorized by this act. All additional funds which may come into the possession of the state treasurer under the terms of the existing law shall be credited to and held in the "veterans' memorial fund." The state is hereby authorized and empowered to accept and receive gifts, bequests and devises for the proposed veterans' memorial building, and the monies so received shall be held and expended only for the construction of such memorial and for its support and maintenance.

History: En. Sec. 12, Ch. 103, L. 1927.

4562.2. Interest to be credited to veterans' memorial fund. That from and after the first day of March, 1929, the interest on daily balances of all

moneys which are deposited by the state treasurer as required by law belonging to the veterans' memorial fund shall be credited to and belong exclusively to such fund.

History: En. Sec. 1, Ch. 60, L. 1929.

4562.3. Investment of fund. The state board of land commissioners is hereby authorized and empowered to securely invest the money now in the state treasury or which may hereafter accumulate therein to the credit of the veterans' memorial fund, in bonds of the United States, state bonds, county bonds, or school district bonds, the principal and interest of which investments shall be treated and considered as belonging exclusively to the veterans' memorial fund, to be used for the purposes in contemplation provided for by sections 4551 through 4562.1.

History: En. Sec. 2, Ch. 60, L. 1929.

CHAPTER 351

COUNTY FREE LIBRARIES

- Section 4563. Proceedings to establish county library.
4564. Withdrawal of incorporated city or town.
4565. County librarian—appointment and removal—salary—qualifications.
4566. Supervision of county commissioners over libraries—branches and stations—employees and apprentices.
4567. Oath, duties, and compensation of librarian.
4568. Library tax—bonds for building—gifts and bequests—funds and claims.
4569. Acceptance of property of school libraries.
4570. School libraries as branches of county library.
4571. Funds of district library turned over to county library.
4572. Disestablishment of library.
4573. How libraries of city or town may assume functions of county library.

4563. Proceedings to establish county library. Upon petition signed by not less than twenty per cent. of the resident taxpayers whose names appear upon the last assessment-roll of the county, at least half of whom shall reside outside of the county seat, being filed with board of county commissioners, requesting the establishment of a county free library, the county commissioners of any county shall appoint a meeting for a public hearing, and may in their discretion, by resolution, establish at the county seat a county free library, as provided in this act. For four successive weeks prior to taking such action, the board of county commissioners shall publish, in each issue of a newspaper of general circulation in such county, notice of such contemplated action, giving therein the date and place of the meeting for a public hearing at which such action is proposed to be taken.

History: En. Sec. 1, Ch. 45, L. 1915; amd. Sec. 1, Ch. 137, L. 1917; re-en. Sec. 4563, R. C. M. 1921.

4564. Withdrawal of incorporated city or town. After the establishment of a county free library as provided in this act, the board of trustees, common council, or other legislative body of any incorporated city or town in the county, may withdraw such incorporated city or town from the operation of this act, by notifying the board of county commissioners that such city or town no longer desires to be a part of the county free library system, and thereafter the residents of such city or town shall cease to participate in the benefits of such county free library, and the property situ-

ated in such city or town shall not be liable to taxes for county free library purposes; provided, that public notice of such contemplated action by the board of trustees, common council, or other legislative body of any incorporated city or town desiring to withdraw such incorporated city or town from the operation of this act, shall be given by publication in some newspaper of general circulation in such city or town, for at least once a week for four successive weeks prior to taking such action, giving therein the date and place of the meeting at which such contemplated action is proposed to be taken.

History: En. Sec. 2, Ch. 45, L. 1915; re-en. Sec. 4564, R. C. M. 1921.

4565. County librarian—appointment and removal—salary—qualifications. Upon the establishment of a county free library, the board of county commissioners may appoint a county librarian who shall receive not less than one hundred dollars per month and who may be removed for cause, after the hearing, by said board. Any person who is a graduate of a library school, or has had two years' practical experience in a library of not less than three thousand volumes, shall be eligible to the office of county librarian; provided, that, from and after the creation and organization of a state board of library examiners no person shall be eligible to the office of county librarian, unless, prior to his appointment, he has received from said board of library examiners a certificate of qualification for the office.

History: En. Sec. 3, Ch. 45, L. 1915; amd. Sec. 2, Ch. 137, L. 1917; re-en. Sec. 4565, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1923.

4566. Supervision of county commissioners over libraries—branches and stations—employees and apprentices. The county free library shall be under the general supervision of the board of county commissioners, who shall have the power to make general rules and regulations regarding the policy of the county free library. The county librarian shall have power to establish branches throughout the county, and may locate said branches and stations wherever deemed advisable; to determine the number and kind of employees of such library, and to employ and dismiss such employees. All employees of the county free library whose duties require special training in library work shall be graded in grades to be established by the county librarian, according to the duties required of them. Before appointment to a position in the graded service, the candidate must pass an examination appropriate to the position sought, satisfactory to the county librarian, and show a satisfactory experience in library work; provided, that the county librarian may also accept as apprentices, and who shall receive no compensation, candidates possessing personal qualifications satisfactory to the librarian, and the librarian may dismiss such apprentices at any time if in her judgment the work is not satisfactory.

History: En. Sec. 4, Ch. 45, L. 1915; amd. Sec. 3, Ch. 137, L. 1917; re-en. Sec. 4566, R. C. M. 1921.

4567. Duties, and compensation of librarian. The county librarian shall, subject to the general rule adopted by the board of county commissioners, build up and manage, according to the accepted principles of library management, a library for the use of the people of the county, shall establish branches and stations throughout the county, and shall determine what

books and other equipment shall be purchased. The library building shall be under the general supervision and care of the county librarian. The county librarian shall be allowed actual and necessary traveling expenses incurred in the business of the office, and such compensation as the board of county commissioners may fix. The boards of county commissioners of the several counties of the state are hereby authorized to audit and allow such traveling expenses and other compensation of the county librarian of the respective counties, and the same shall be paid out of the county free library fund.

History: En. Sec. 5, Ch. 45, L. 1915; amd. Sec. 4, Ch. 137, L. 1917; re-en. Sec. 4567, R. C. M. 1921.

4568. Library tax—bonds for building—gifts and bequests—funds and claims. The board of county commissioners, after a county free library has been established, may annually levy, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed one mill on the dollar upon all property in such county, for the purpose of maintaining the county free library. County bonds may be issued in the manner prescribed in sections 4614 to 4616 of these codes, for the erection and equipment of county free library buildings, and the purchase of land therefor. The board of county commissioners is authorized to receive, on behalf of the county, any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds of the county free library, whether derived from taxation or otherwise, shall be in the custody of the county treasurer. They shall constitute a separate fund, called the county free library fund, and shall not be used for any purposes except those of the county free library. Each claim against the county free library fund shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county.

History: En. Sec. 6, Ch. 45, L. 1915; re-en. Sec. 4568, R. C. M. 1921.

NOTE.—Sections 4614 to 4616 referred to in this section have been repealed. See sections 4630.1-4630.33 for county bonding provisions.

4569. Acceptance of property of school libraries. The board of county commissioners shall have power to accept, on behalf of the county free library, all books and other property of school libraries as provided by sections 1181 to 1186 of this code, and to manage and maintain the same as a part of the county free library.

History: En. Sec. 7, Ch. 45, L. 1915; re-en. Sec. 4569, R. C. M. 1921.

4570. School libraries as branches of county library. Whenever the county in which a school district library is situated shall maintain a county free library, the board of school trustees or city board of education may agree with the proper authorities of such county to make the school district library a branch of such county library. In this event this board of school trustees or city board of education shall turn over the books to the county free library, and shall annually transfer to such county free library its library fund, as soon as it is available, to be kept and expended as other

funds of such county library. The said county free library shall thereupon have such district library managed and maintained according to the rules and regulations established by the authorities of the county free library.

History: En. Sec. 8, Ch. 45, L. 1915; re-en. Sec. 4570, R. C. M. 1921.

4571. Funds of district library turned over to county library. Whenever a school district library shall have become a branch library, as provided in the preceding section, the county or city superintendent of schools may draw a warrant for the whole amount of the district library fund, payable to the proper authorities of the county free library, upon the filing with him of a copy of the resolution of the board of trustees of the district or the city board of education, embodying the agreement made with such county free library, which copy shall be duly certified as correct by the clerk and recorder of the county, or other proper officer.

History: En. Sec. 9, Ch. 45, L. 1915; re-en. Sec. 4571, R. C. M. 1921.

4572. Disestablishment of library. After a county free library has been established, it may, upon petition signed by not less than ten per cent. of the qualified voters of a county requesting its disestablishment being filed with the board of county commissioners, be disestablished in the same manner as it was established. At least once a week for four successive weeks prior to taking such action, the board of county commissioners shall publish, in a newspaper designated by them and published in the county, notice of such contemplated action, giving therein the date and place of meeting for a public hearing at which contemplated action is proposed to be taken; provided, that an interval of three months shall elapse between such action and the disestablishment.

History: En. Sec. 10, Ch. 45, L. 1915; re-en. Sec. 4572, R. C. M. 1921.

4573. How libraries of city or town may assume functions of county library. Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees, or other authority in charge of the free public library of any incorporated city or town, and the board of library trustees, or other authority in charge of such free public library, is hereby authorized to make such a contract. Such contract may provide that the free public library of such incorporated city or town shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city or town such sum as may be agreed upon. Either party to such contract may terminate the same by giving six months' notice of intention to do so.

History: En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R. C. M. 1921.

CHAPTER 352

COUNTY LAND ADVISORY BOARDS

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| Section | 4573.1. | County land advisory boards—creation and purpose. |
| | 4573.2. | Definition of terms. |
| | 4573.3. | Membership of board—duties. |
| | 4573.4. | Meetings—quorum—record of minutes—rules and regulations—county clerk to be clerk of board. |
| | 4573.5. | Policy of state declared. |
| | 4573.6. | Examination, classification and appraisal of land may be recommended by board. |

- 4573.7. Cooperation in establishing grazing districts.
- 4573.8. Advisory capacity of board concerning leases.
- 4573.9. Assistance in exchange of lands.

4573.1. County land advisory boards—creation and purpose. There is hereby created in each county, a department of county government of the state of Montana, to be known and designated as “the county land advisory board.” The general purposes of this department shall be to co-operate with the boards of county commissioners of each county in administering lands belonging to the respective counties.

History: En. Sec. 1, Ch. 67, L. 1933.

4573.2. Definition of terms. In this act, the term, “lands,” shall mean all lands now owned by the respective counties, which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means, and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs. The term “board” shall mean “the county land advisory board.”

History: En. Sec. 2, Ch. 67, L. 1933.

4573.3. Membership of board—duties. The board of each county shall consist of five members. The membership and terms shall be as follows: Three properly qualified taxpayers and residents, to be appointed by the judge of the district court, one for a two year term; one for a four year term; and one for a six year term, (and on the expiration of such terms, the succeeding members shall be appointed for the term of six years, the state senator and one state representative, who shall be designated by the judge of the district court.) The members shall serve without pay. The board shall advise with boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange and disposition of all lands, when so requested by said board of county commissioners.

History: En. Sec. 3, Ch. 67, L. 1933.

4573.4. Meetings—quorum—record of minutes—rules and regulations—county clerk to be clerk of board. The board shall hold regular meetings on the first Wednesday following the first Monday of each month, and may hold meetings whenever deemed necessary upon call of the chairman, or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board shall, from its membership, select a chairman. It shall be the duty of the board to keep a record of the minutes of all meetings thereof in a suitable book provided by the board of county commissioners for that purpose, and to preserve all important documents, maps, plats and papers. The board may adopt whatever rules and regulations it deems proper for the conduct of its meetings. The county clerk shall be the clerk of said board, and as such shall keep the minutes of all meetings thereof and be custodian of all its records.

History: En. Sec. 4, Ch. 67, L. 1933.

4573.5. Policy of state declared. It is hereby declared to be the policy of the state of Montana: To promote the conservation of the natural re-

sources of the state; to provide for the conservation, protection and development of forage plants, and for the beneficial utilization thereof for grazing by livestock under such regulations as may be considered necessary; to put into crop production only such lands as are properly fitted therefor; to encourage the storage and conservation of water for livestock and irrigation; to place the farming and livestock industries upon a permanent and solid foundation; to extend preference in sales and leases of lands to resident farmers, stockmen and taxpayers; to gradually restore to private ownership the immense areas of lands, which have passed into county ownership because of tax delinquencies.

History: En. Sec. 5, Ch. 67, L. 1933.

4573.6. Examination, classification and appraisal of land may be recommended by board. The board may recommend the examination, classification and appraisal of such lands as in its opinion have not previously been properly examined, classified and appraised.

History: En. Sec. 6, Ch. 67, L. 1933.

4573.7. Cooperation in establishing grazing districts. The board may co-operate with boards of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts, whereby county lands may be leased either on a per head or per acre basis.

History: En. Sec. 7, Ch. 67, L. 1933.

4573.8. Advisory capacity of board concerning leases. The board may act in an advisory capacity in fixing the fees, terms and conditions of grazing and agricultural leases.

History: En. Sec. 8, Ch. 67, L. 1933.

4573.9. Assistance in exchange of lands. The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: En. Sec. 9, Ch. 67, L. 1933.

CHAPTER 353

RURAL IMPROVEMENT DISTRICTS

Section 4574.	Rural improvement districts—creation and objects.
4575.	Resolution of intention—publication, mailing and notice.
4576.	Extension of district by county commissioners, when.
4577.	Protests against creation or extension of district—hearing.
4578.	Jurisdiction attaches, when—resolution creating district.
4579.	Sufficiency of subsequent resolutions, etc.
4580.	Notice inviting proposals—publication and posting—opening bids—re-advertisement.
4581.	Reletting or completion of contract on delinquency of contractor.
4582.	Bond of contractor or contracting owners.
4583.	Notice of defects or irregularities—objections.
4584.	Assessment of costs—apportionment of costs—railroads.
4585.	Federal property omitted from assessment.
4586.	Tax levy—resolution—term of years.
4587.	Notice of resolution—contents—objections.
4588.	Damages to be added to costs, when—additional assessments.
4589.	Incidental expenses as costs of improvement—duty of county clerk.
4590.	Special assessments, etc., a lien on property.
4591.	Effect of misnomer or mistake.

- 4592. Maintenance of improvements—resolution—change in maintenance districts.
- 4593. Form and terms of district warrants and bonds.
- 4594. Contracts payable in warrants—conversion into cash, when.
- 4595. County treasurer to collect assessments.
- 4596. Correction of erroneous or invalid assessment.
- 4597. Payment of tax under protest—action to recover.
- 4598. Mistake not to vitiate liens.
- 4599. Definition of terms.
- 4600. Jurisdiction of board preserved on adjournment—notice of hearing.
- 4601. County clerk to post notices—effect of error.
- 4601.1. Maintenance of lighting system in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment.
- 4601.2. Power to change boundaries—application of act.
- 4602. Transfer of management and control of district to city or town.
- 4603. Authority of city or town to levy tax.

4574. Rural improvement districts—creation and objects. Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929.

References

Swords v. Simineo, 68 M 164, 170, 216 P. 806.

4575. Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made

against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921.

Operation and Effect

Failure to give the notice required by this section, in the attempted creation of a rural improvement district deprived the county of jurisdiction to proceed and a property owner, in his action to enjoin

the collection of the tax against his property to pay for the improvement, was not estopped to deny the validity of the assessment by his omission to object to the creation of the district prior to its completion. *Billings B. W. Assn. v. Yellow-tone Co.*, 70 M 401, 225 P 996.

References

Swords v. Simineo, 68 M 164, 216 P 806; *Swords v. Nutt*, 11 F 2d 936.

4576. Extension of district by county commissioners, when. Whenever a contemplated work, or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit, or whenever according to the estimates furnished by the county surveyor or an engineer approved by the board of county commissioners and designated in the petition, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment-roll, whereon it was assessed for taxes, the board of county commissioners may make the expense of such work chargeable upon the extended district, and which may include other lots and lands not fronting on the improvement, and which the said board of county commissioners shall in its resolution of intention declare to be the district benefited by said work or improvements, and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 216 P 806.

4577. Protests against creation or extension of district—hearing. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon the property fronting thereon, and the board of county commissioners finds that such protest is made by the owners of more than fifty per cent of the area fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within the extended district, and the board of county commissioners finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for

such improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said county clerk, except in case the improvements are the construction of sanitary sewers, when the said protests may be overruled by a unanimous vote of the board of county commissioners. In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

4578. Jurisdiction attaches, when—resolution creating district. When no protests have been delivered to the county clerk within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, or when a protest against the extending of the proposed district shall have been heard and denied, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

4579. Sufficiency of subsequent resolutions, etc. In all resolutions, notices, orders and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R. C. M. 1921.

4580. Notice inviting proposals—publication and posting—opening bids—re-advertisement. A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided, shall be published at least twice in a daily, semi-weekly or weekly newspaper published and circulated nearest to the boundaries of the said proposed improvement district, and which paper shall be designated by the board of county commissioners for that purpose, and a copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind of type or materials to be used in making any or all of said improvements after the bids or proposals therefor shall have been opened, examined and declared.

The time fixed for the opening of the bids shall not be less than fifteen days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the board of county commissioners, certified by a responsible bank, for an amount which shall not be less than ten per cent. of the aggregate of said proposal. Such proposals or bids shall be delivered to the county clerk, and the board of county commissioners shall, in open session, publicly open and examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check.

The board of county commissioners may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the board of county commissioners, and shall reject all proposals, other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for such work or improvement, to the lowest responsible bidder at the prices named in his bid.

If the bids are rejected or no bids are received the board of county commissioners may within six months thereafter re-advertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks accompanying the bids so rejected, but the check accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work as hereinafter provided has been entered into, either by the said lowest bidder, or by the owners of over fifty per cent. of frontage, whereupon said certified check shall be returned to said bidder, but if said bidder fails, neglects or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the certified check accompanying his bid, in the amount herein mentioned, shall be declared to be forfeited to the said board of county commissioners, and shall be collected by it, and paid into the general fund of the county.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R. C. M. 1921.

4581. Reletting or completion of contract on delinquency of contractor.

If the contractor who may have taken any contract does not complete same within the time limited in the contract, or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners, which may relet the unfinished portion of said work, after pursuing the formalities prescribed herein for the letting of the whole in the first instance, or the board of county commissioners shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds or warrants, due such contractor, and in the event there is no money, bonds or warrants due such contractor from which to deduct such cost, then and in such event the board of county commissioners shall have the right to sue such contractor and recover from him such costs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 8, Ch. 147, L. 1921; re-en. Sec. 4581, R. C. M. 1921.

4582. Bond of contractor or contracting owners. All contractors and contracting owners included shall at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, with two or more sureties, payable to said county in a sum not less than twenty-five per cent. of the amount of the contract, conditioned for the faithful performance of the contracts, indemnifying the county from any detriment, damage or loss growing out of said work, and the sureties shall justify before any person competent to administer an oath in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be considered as to prevent or prohibit the board of county commissioners from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R. C. M. 1921.

4583. Notice of defects or irregularities—objections. At any time within sixty days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract or plot of land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid, and all claims for damages therefor shall be waived by such property owner, in case no written objection is filed by him; provided, that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this act.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 10, Ch. 147, L. 1921; re-en. Sec. 4583, R. C. M. 1921.

4584. Assessment of costs—apportionment of costs—railroads. To defray the cost of making any of the improvements provided for in this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such district to be assessed with the percentage of the whole cost which its assessed valuation as determined by the last preceding assessment roll of the county bears to the total assessed value of all the property in the district; provided, however, that the board of county commissioners in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements

herein provided for, between the corner lots and inside lots of any block, the board of county commissioners may in the resolution creating any improvement district provide that whenever any of the improvements herein provided for, water systems excepted, shall be along any side street or abutting upon the side of any corner lot or block, that the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that such corner lot or block shall bear double the amount assessed against any inside lot of equal area. Whenever any portion of the surface of a street is kept or used by any person, firm or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by the person, firm or corporation owning such railroad, and where double tracks of railroads are laid, such person, firm or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R. C. M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

4585. Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 12, Ch. 147, L. 1921; re-en. Sec. 4585, R. C. M. 1921.

Operation and Effect

In an action by the receiver of a national bank to recover an assessment paid under protest for improvements in a rural improvement district under this section on the ground that the bank was a "mandatory" of the government and therefore exempt, complaint held insufficient for failure to allege that the property was excluded from liability in the resolution of

intention to create the district or that plaintiff acquired the property prior to the time it was passed by the board of county commissioners. Swords v. Simineo, 68 M 164, 170, 216 P 806.

Held, that an irrigation company engaged in the reclamation of arid lands, under the Carey act is not a mandatory of the federal government, and therefore not exempt from assessments for special improvements. Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

References

Swords v. Nutt, 11 F 2d 936.

4586. Tax levy—resolution—term of years. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made,

and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed ten years, payment to be made in equal annual instalments.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

4587. Notice of resolution—contents—objections. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R. C. M. 1921.

4588. Damages to be added to costs, when—additional assessments. Whenever the owner or any one interested in any property, situate in the special improvement district, after having filed with the county clerk a written notice, claiming that his property had been damaged, shall be awarded or recover any amount on account of damages sustained to said property by the reason of the construction of any improvement in said special improvement district, before the resolution levying the assessment to defray the cost of making such improvements in said district has been passed and adopted by the board of county commissioners, the amount so ordered as recovered shall be added to and constitute a part of making such improvements, but if the resolution levying the assessment to defray the cost and expenses of making said improvements has been passed and adopted by the board of county commissioners, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in said district for the purpose of paying the amount so awarded of covering the said supplemental resolution, and shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making such improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

4589. Incidental expenses as costs of improvement—duty of county clerk. The cost and expense connected with and incidental to the forma-

tion of any special improvement district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement districts, and it shall be the duty of the engineer selected as hereinbefore provided to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the county clerk, whose duty it shall be to prepare all necessary schedules and resolution levying the taxes and assessments in such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R. C. M. 1921.

4590. Special assessments, etc., a lien on property. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R. C. M. 1921.

4591. Effect of misnomer or mistake. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R. C. M. 1921.

4592. Maintenance of improvements—resolution—change in maintenance districts. Whenever any sanitary or storm sewers, lights or light systems, water-works plants, water systems, or sidewalks, or any other special improvements petitioned for, or created by the state or federal government, have been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board of county commissioners, under whose jurisdiction the district was created or supervised or directed, adequately and suitably to maintain and preserve said improvements and fully to keep the same in proper repair and operations by contract or otherwise, in such way or manner as the board shall deem suitable and proper. The whole cost of maintaining, preserving and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided for by section 4576 of this code. It shall be the duty of the board to estimate as near as practicable the cost of maintaining, preserving or repairing the improvements in each district for each year beginning January first or such other time as it may appear necessary; and before the first Monday in September of each year the board shall pass and finally adopt a resolution levying and assessing all the property within the district within an amount equal to the whole

cost of maintaining, preserving or repairing said improvements within the district, and the same shall be proportioned as provided in section 4576, supra. Said resolution levying assessments to defray the cost of maintenance, preservation or repairs of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing and installing the improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as Special Improvement District No.....Maintenance Fund, the number of which shall correspond with the number of special improvement district in which the improvements so maintained are situated; and such fund shall be used to defray the expense of maintenance, preservation or repair of said improvements, and for not other purpose. Any special assessment levied and made for any of the purposes in this section mentioned, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

The board shall have the power not more than once a year of changing, by resolution, the boundaries of any maintenance district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R. C. M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings B. W. Assn. v. Yellowstone Co., 70 M 401, 225 P 996.

4593. Form and terms of district warrants and bonds. All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district, shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.....
United States of America
State of Montana.

Warrant or Dollars
(Bond No.....) \$.....

Interest at the rate of six per cent. per annum, payable annually.
Special Improvement District Coupon Warrant or Bonds.
..... Montana.

Issued by the county of....., Montana.

The county treasurer of..... county, Montana, will pay to....., or bearer, the sum of.....dollars, as authorized by resolution No....., as passed on the.....day of....., 19....., creating or maintaining special improvement district No....., for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and inter-

est of this warrant (or bond) are payable at the office of the county treasurer of.....county, Montana.

This warrant (or bond) bears interest at the rate of six per cent. per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of.....of each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of....., Montana, relating to the issuance thereof.

Dated at....., Montana, this..... day of....., 19....., county of....., Montana.

(Seal.)

By....., chairman of the board of county commissioners. (Seal.)

.....county clerk.

Registered at the office of the county treasurer of..... county, Montana, this.....day of....., 19.....

.....
County treasurer.

And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest at the rate of six per cent. per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall be signed by the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signature of the chairman of the board of county commissioners and the county clerk; provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars or frac-

tions, or multiples thereof; and may be issued in instalments, and may extend over a period of not to exceed ten years. Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided, that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date so fixed, interest shall cease. When it is provided by the resolution creating or maintaining the district that the work be paid in warrants (or bonds) the board of county commissioners shall by resolution fix the denominations of such warrants (or bonds) which may be one hundred dollars, or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent. per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed ten years from and after the date of issuance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921.

4594. Contracts payable in warrants—conversion into cash, when. Whether provided in the call for proposals, or not, all contracts let under the provisions of this act shall be payable in bonds or warrants issued under the provisions hereof, and the board of county commissioners may provide by contract with the person, persons or corporation doing the work, or making the improvement, or maintaining, preserving, or repairing the same, for the payment of which such warrants or bonds are issued, to deliver the said warrants or bonds in instalments as the work progresses, or upon the entire completion thereof; provided, however, that no warrants or bonds must be delivered to such contractor or contractors in excess of the amount of work actually done at the time of the delivery; nor shall the total amount issued be in excess of the total cost and expense of the improvements, and no warrants or bonds shall be delivered or received in payment of a less sum than its face value. And when it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue or alley, or to pay any amount

awarded or covered on account of damages to any property caused by the making of any improvements, in money, in cases where the persons whose property is so taken or damaged, refuse to receive pay in warrants or bonds, then the board of county commissioners shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 21, Ch. 147, L. 1921; re-en. Sec. 4594, R. C. M. 1921.

4595. County treasurer to collect assessments. It shall be the duty of the county treasurer, in accordance with the provisions of the revised codes of Montana, where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R. C. M. 1921.

4596. Correction of erroneous or invalid assessment. Whenever, by reason of any alleged non-conformity to any law, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct the same, and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as it made at the time provided by law, or resolution relating thereto; and may re-assess and re-levy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and re-assessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon re-assessment or re-levy shall, so far as it is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provision of any law specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this act. Any and every rule and regulation of any board of county commissioners passed in substantial conformity with this section is hereby legalized.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 23, Ch. 147, L. 1921; re-en. Sec. 4596, R. C. M. 1921.

4597. Payment of tax under protest—action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the county in whose behalf the same was collected, to recover such tax or any portion thereof so paid under protest; provided,

however, that any action instituted to recover such tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 24, Ch. 147, L. 1921; re-en. Sec. 4597, R. C. M. 1921.

4598. Mistake not to vitiate liens. Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 25, Ch. 147, L. 1921; re-en. Sec. 4598, R. C. M. 1921.

4599. Definition of terms. 1. The person owning the fee, or the person to whom, on the day the action is commenced, appears the legal title to the lot and lands, by deed duly recorded in the county recorder's office in each county, or the person in possession of lands, lots or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator or guardian of the owner, shall be regarded, treated and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

2. The words "work," "improved" and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, maintenance and repairs, of all or any portion of said work.

3. The term "incidental expenses," as used in this act, shall include the compensation of the engineer selected as hereinbefore provided for work done by him; also the cost of printing and advertising, as provided in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses in this subdivision shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

4. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or a semi-weekly newspaper, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to publications herein provided for; provided, however, that in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such county, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in each voting precinct, except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner,

publisher, printer or clerk or the newspaper, or of the poster of the notice. No publication of notice other than that provided for in this act shall be necessary to give validity to any of the proceedings provided therein. The word "twice," as used in this act, referring to the number of times, notices, resolutions or other matter shall be published, shall be held to mean publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

5. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

6. The word "paved" or "re-paved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

7. The word "street," as used in this act, shall be deemed and is hereby declared to include avenues, highways, lanes, alleys, crossings or intersections, courts and places, which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

8. The term "engineer," designated in the petition as used in this act, shall be understood and so construed as to mean the person, firm or corporation whose name is designated and approved by the board of county commissioners as the engineer in the original petition asking for the improvement and may be the county surveyor.

9. The term "board of county commissioners" is hereby declared to include any body or board which under the law is the legislative department of the government of the county.

10. The terms "clerk," "county clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said board of county commissioners.

11. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or when no main street intervenes all the way to the boundary line of any city.

12. The term "county treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the county.

13. The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R. C. M. 1921.

References
Swords v. Nutt, 11 F 2d 936.

4600. Jurisdiction of board preserved on adjournment—notice of hearing. Whenever in proceedings hereunder, a time and place for hearing by the board of county commissioners is fixed, and, from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power and jurisdiction of the board of county commissioners in the premises shall not be thereby divested or lost, but the board of county commissioners may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the board of county commissioners shall have power to act in as in the first instance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R. C. M. 1921.

4601. County clerk to post notices—effect of error. Whenever any resolution, order, notice or determination is required to be published or posted, and the duty of posting or procuring the publication or posting the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order or determination hereinunder when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 28, Ch. 147, L. 1921; re-en. Sec. 4601, R. C. M. 1921.

4601.1. Maintenance of lighting system in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment. When there has been, or shall be, created a rural improvement district, according to the provisions of sections 4574 through 4603, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, and no expense of construction is incurred by such rural improvement district in the installation of such lighting system, and it is necessary only to secure funds for the maintenance and operation of said system, and lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation, the board of county commissioners of such county may enter into a contract with other persons or corporation for the purpose of furnishing light to said rural improvement district. The cost of said service to said rural improvement district may be apportioned among the various tracts of land within said improvement district in proportion to the assessed value of said lands as determined by the said board of county commissioners, and before the first Monday of September of each year, the board of county commissioners shall pass, and finally adopt, a resolution levying and assessing all the property within the district, an amount equal to the whole cost of maintaining said lighting system, and the same shall

be proportioned against the several tracts of land in said district as provided herein. Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts, and the money collected therefor, shall be paid into a fund known as Special Improvement District No..... Maintenance Fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated, and such funds shall be used to defray the expense of maintenance of said system, and for no other purpose. Any such assessment levied and made for any purpose in this section mentioned, together with all cost and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can be only extinguished by payment of such assessments, with all penalties, costs and interest.

History: En. Sec. 1, Ch. 58, L. 1933.

4601.2. Power to change boundaries—application of act. The board has the power not more than once a year of changing, by resolution, the boundaries of any maintenance district. Provisions of this act shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933.

4602. Transfer of management and control of district to city or town. When a special improvement district has been created in accordance with the provisions of chapter 123, laws of the fourteenth legislative assembly, in any county of the state, and the property contained therein shall have become a part of or included within the boundaries of an incorporated city or town, such city or town is authorized and empowered to take over, operate, and control the same, and the board of county commissioners shall have the right and authority to transfer the operation, control and management thereof to such city or town, upon such terms and conditions as may be agreed upon.

History: En. Sec. 1, Ch. 156, L. 1919; re-en. Sec. 4602, R. C. M. 1921.

4603. Authority of city or town to levy tax. Such city or town is authorized to levy and collect a special tax for the purpose of raising funds to pay the expense of maintenance, operation, and control of such improvement district.

History: En. Sec. 2, Ch. 156, L. 1919; re-en. Sec. 4603, R. C. M. 1921.

CHAPTER 354

CLAIMS AGAINST COUNTIES—COUNTY WARRANTS

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| Section | 4604. County officer not to present certain claims against county. |
| | 4605. Claims to be itemized and verified—time for presenting. |
| | 4605.1. Request for bids necessary in making purchases exceeding one thousand dollars. |
| | 4606. In what transactions commissioners not to be interested. |
| | 4607. Claims in favor of county commissioners. |

- 4608. Payment of claims incurred in counties of the first class.
- 4609. Account must be filed prior to session.
- 4610. Appeals.
- 4611. Duty of clerk on appeals.
- 4612. Warrants—specification—presentation and payment.
- 4613. Annual examination of warrants by board.

4604. County officer not to present certain claims against county. No county officer must, except for his own service, present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R. C. M. 1921. Cal. Pol. C. Sec. 4071.

Operation and Effect

While mere benefits received will not ordinarily create an implied promise to pay, where a county (or other municipal corporation) is required by law to furnish one of its officers with the necessary equipment for the performance of his duties, and it does not do so but knowingly permits him to use his own equipment, receiving benefits therefrom, it is liable for the reasonable value of its use as upon an implied contract. *Hicks v. Still-*

water County, 84 M 38, 42 et seq., 274 P 296.

Id. This section, providing that a county officer must not present any claim against the county, except for his own services, nor aid another in procuring allowance of a demand against the county, does not bar an officer from presenting a valid claim against the county, such as the one above referred to, the provision being merely intended to bar the officer from championing the claims of third persons.

References

Kalman v. Treasure County et al., 84 M 285, 288, 275 P 743.

4605. Claims to be itemized and verified—time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated, and is verified by affidavit showing that the account is just and wholly unpaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Every claim against the county must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, *Bannack Stat.*; re-en. Sec. 23, p. 437, *Cod. Stat.* 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R. C. M. 1921. Cal. Pol. C. Sec. 4072.

What Is a Claim Against the County

A claim against a county for the repayment of taxes paid under protest was an "account" within the meaning of a section similar to the above. *Powder River Cattle Co. v. Commrs. of Custer County*, 9 M 145, 152, 153, 22 P 383.

The subject-matter of an action against a county by which it was sought to obtain compensation for land taken for road purposes under an agreement, the consideration for which failed, is not a "claim" against the county, within the meaning of this section, an action on which is barred if not brought within one year after its accrual. *Flynn v. Beaverhead County*, 54 M 309, 314, 170 P 13.

A section similar to the above was held not to apply to the claim of a surveyor for services performed by virtue of his employment under the terms of a special act creating a boundary commission for the survey of the boundaries of certain counties, and empowering such commission to ascertain the expenses incurred in such survey, and to certify to and file with the county clerks of their respective counties the amount thereof. *Kornburg v. Commrs. Deer Lodge Co.*, 10 M 325, 329, 25 P 1041.

A person who serves as a member of a sheriff's posse in obedience to a law requiring him to do so, cannot recover from the county for expenses or services rendered, in the absence of an express or implied provision of law authorizing payment therefor. *Sears v. Gallatin County*, 20 M 462, 465, 52 P 204. See *State ex rel. McGrade v. District Court*, 52 M 371, 376, 157 P 1157.

A claim against the county within the meaning of this section the presentation of which to the board of county commissioners is a condition precedent of an ac-

tion for its recovery, does not comprehend a claim by a school district for its proportion of interest and penalties retained by the county on redemption of property from tax sale, it presenting a question of the law dependent upon the meaning of statutes, thus leaving no room for the exercise of discretion lodged in the board in passing upon the average claim presented for allowance. *School Dist. No. 12 v. Pondera Co.*, 89 M 342, 351, 297 P 498.

Pleading

A complaint in an action against a county to recover witness fees, which failed to allege that the claim had been presented under oath to the county, in separate items, with the nature of each item stated, was held to be defective. *First Nat. Bank v. Custer County*, 7 M 464, 472, 17 P 551.

The presentation of a claim to the board of county commissioners is a condition precedent to the commencement of an action against the county for its recovery. *Powder River Cattle Co. v. Commrs. of Custer County*, 9 M 145, 152, 22 P 383; *Greeley v. Cascade County*, 22 M 580, 588, 57 P 274. See also *First Nat. Bank of Billings v. Custer County*, 7 M 464, 472, 17 P 551.

References

Cited or applied as section 2945, revised codes, in *State v. Story*, 53 M 573, 582, 165 P 748; *State ex rel. Dolin v. Major*, 58 M 140, 146, 192 P 618; *Manley v. Harer et al.*, 73 M 253, 263, 235 P 757; *Kalman v. Treasure County et al.*, 84 M 285, 288, 275 P 743; *Good Roads Machinery Co. v. Broadwater Co.*, 94 M 68, 70, 20 P 2d 834.

4605.1. Request for bids necessary in making purchases exceeding one thousand dollars. No contract shall be entered into by a board of county commissioners for the purchase of any automobile, truck or other vehicle, or road machinery, or other machinery, apparatus, appliances or equipment, or materials, or supplies of any kind, for which must be paid a sum in excess of one thousand dollars (\$1,000), without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided, however, that this act shall not apply to contracts for purchases, which in the opinion of the board are made necessary by fire, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear or tear, mischief, or for the relief of a stricken community overtaken by calamity.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935.

4606. In what transactions commissioners not to be interested. No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or the purchasing of supplies, or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R. C. M. 1921. Cal. Pol. C. Sec. 4077.

4607. Claims in favor of county commissioners. All claims against the county presented by members of the board for per diem and mileage, or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907; re-en. Sec. 4607, R. C. M. 1921. Cal. Pol. C. Sec. 4082. **Operation and Effect** This section is a mere prescription, touching the manner in which commis-

sioners' claims for compensation shall be formulated, and is designed in connection with section 4605 to enable the board to determine in the first instance whether it will even consider the claim. The effect of the section is not to authorize compensation to county commissioners, for attend-

ing to business of the county other than meetings of the board, and inspecting and overseeing road work, without a previous order of the board, charges for which services are otherwise illegal. *State v. Story*, 53 M 573, 582, 583, 165 P 748.

4608. Payment of claims incurred in counties of the first class. The board of county commissioners in any county of the first class may, in its discretion, allow any claims for services rendered or labor performed for or on behalf of the county by any person at the request of any county officer, whether or not such county officer was empowered or authorized to secure, obtain, or contract for the rendition of any such service rendered or labor performed, where the person holding such claim has presented the same in due time in the manner provided by law, prior to the passage of this act; provided, that such claims shall not exceed the sum of two hundred and fifty dollars for any one year.

History: En. Sec. 1, Ch. 88, L. 1911; re-en. Sec. 4608, R. C. M. 1921.

4609. Account must be filed prior to session. No account must be necessarily passed upon by the board, unless made out as prescribed in the preceding section and filed by the clerk prior to the session at which it is asked to be heard.

History: En. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907; re-en. Sec. 4609, R. C. M. 1921. Cal. Pol. C. Sec. 4073.

4610. Appeals. Whenever a claim against a county is disallowed in whole or in part, or where any taxpayer of the county is not satisfied with any allowance made by the board, the claimant or such taxpayer may appeal from the decision of the board to the district court for the county, by causing a written notice of appeal to be served on the clerk of the board, within thirty days after the making of the decision or allowance, and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute such appeal to effect and to pay all costs that may be adjudged against the appellant.

History: Ap. p. Sec. 25, p. 503, Bannack Stat.; re-en. Sec. 25, p. 437, Cod. Stat. 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Sec. 359, 5th Div. Rev. Stat. 1879; re-en. Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907; re-en. Sec. 4610, R. C. M. 1921. Cal. Pol. C. Sec. 4075.

Appeal of Portion of Allowance

An appeal may be taken by a taxpayer from one or more items of a claim against the county allowed by the commissioners, without appealing from the whole of the allowance. *Twohy v. Board of Commrs. of Granite County*, 17 M 461, 464, 43 P 494.

Board Must Allow or Disallow Claims

When the auditor has disapproved a claim, the board must disallow it so that the claimant may proceed to enforce it against the county by appeal to the dis-

trict court. *State ex rel. Dolin v. Major*, 58 M 140, 151, 192 P 618.

Effect of Failure to Appeal

Failure of a taxpayer to appeal to the district court from an order of the board of county commissioners allowing a claim against the county under the authority given him by this section does not limit the right of the county attorney to sue in the name of the county to recover moneys illegally paid under section 4821. *Carbon County v. Draper*, 84 M 413, 418, 419, 276 P 667.

Independent Action on Claim

A claimant against a county has the right to maintain an independent action on a claim rejected by the board of commissioners in view of section 9035. *Greeley v. Cascade County*, 22 M 580, 586, 57 P 274.

Judgment on Appeal

Where a taxpayer took an appeal to the district court from an allowance by a board of county commissioners of a claim against a county under a statute similar to the above, and thereafter a judgment by default was rendered by such court upon the failure of the board to appear, adjudging such claim illegal and setting aside the allowance of the same, without a trial or inquiry of any character respecting its merits, such judgment was unauthorized and constituted no defense to an application for a writ of mandamus to compel the payment by the county treasurer of a warrant issued in payment of such claim. *State ex rel. Cope v. Minar*, 13 M 1, 4, 31 P 723.

Notice on Appeal

Where an appeal was taken by a taxpayer from the allowance by the commissioners of a bill against the county, and a notice of appeal was served upon the county clerk, and the clerk thereupon transmitted the proceedings in the case, with the copy of the notice of appeal, to the district court, all of which was done under statutes similar to those now in force, it was held that the clerk thereby waived any irregularity or insufficiency of the service of the notice. *Twohy v. Board of Commrs. of Granite County*, 17 M 461, 463, 43 P 494.

Id. On an appeal by a taxpayer from the allowance by the commissioners of a claim against the county under a similar statute, service of the notice of appeal upon the claimant whose bill was allowed was not considered necessary to give the district court jurisdiction, but it was the duty of the court, after acquiring jurisdiction, to give the claimant notice of the pendency of the case and an opportunity to be heard before rendering judgment.

4611. Duty of clerk on appeals. The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court; and such appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner.

History: Ap. p. Sec. 26, p. 504, *Bannack Stat.*; re-en. Sec. 26, p. 437, *Cod. Stat.* 1871; re-en. Sec. 360, 5th Div. *Rev. Stat.* 1879; re-en. Sec. 765, 5th Div. *Comp. Stat.* 1887; amd. Sec. 4289, *Pol. C.* 1895; re-en. Sec. 2948, *Rev. C.* 1907; re-en. Sec. 4611, *R. C. M.* 1921.

Appeals How Tried

Appeals from actions of boards of county commissioners are prosecuted and tried like appeals from a justice of the

Parties

In the case of claims against counties, the claimant, or the objecting taxpayer, and the county are the real parties in interest, and therefore adversary parties. *State ex rel. Hackshaw v. District Court*, 48 M 477, 480, 138 P 1100.

On appeal from an order of the board of county commissioners allowing or disallowing a claim under this and the following section, the parties are the county and the claimant, or, in a taxpayer's suit, the county and the objecting taxpayer. *Albers v. Barnett*, 53 M 71, 79, 161 P 518.

Record on Appeal

Where an appeal from an order of the board of county commissioners disallowing a claim against the county was submitted to the district court without a hearing, resulting in a reversal of the order, the contention of the county attorney made on appeal from the court's order declining to set aside its decision on the ground of inadvertence and mistake based on the assertion that the clerk of the board had failed to lodge with the court a copy of the board's record in the case, held not sustained, it being apparent that to arrive at its decision the court must have impliedly found that the proper record was before it. *Huntington v. Yellowstone County*, 80 M 20, 23, 257 P 1041.

References

Cited or applied as section 4288, political code, in *Independent Publishing Co. v. County of Lewis and Clark*, 30 M 83, 84, 75 P 860; as section 2947, revised codes, in *State ex rel. Hackshaw v. District Court*, 48 M 477, 480, 138 P 1100; *Thien v. Wiltse*, 49 M 189, 194, 141 P 146; *State ex rel. Lockwood v. Tyler*, 64 M 124, 131, 208 P 1081.

peace. *State ex rel. Seres v. District Court*, 19 M 501, 504, 48 P 1104.

The language of the last clause of this section can mean no more than that the court may try de novo the question whether the action of the board in its allowance or disallowance was correct, and so declare. The board is not a court, and its action is not tantamount to a judgment. Its refusal to allow a claim is not conclusive, even though the claimant does not appeal. *Greeley v. Cascade County*,

22 M 580, 586, 57 P 274; *Albers v. Barnett*, 53 M 71, 80, 161 P 518.

Jurisdiction on Appeal

The jurisdiction of the district court on appeal from an order made by county commissioners allowing or disallowing a claim against the county is limited to the determination of the question whether the action of the board was correct and to a declaration affirming or reversing it, with a judgment for costs. *Albers v. Barnett*, 53 M 71, 80, 161 P 518.

Waiver of Notice

By denying a county attorney's motion

to set aside its decision reversing an order of the board of county commissioners disallowing a claim against the county, asked for on the ground of inadvertence and mistake in that the clerk of the board had failed to give him notice of the appeal as required by this section the court impliedly found as contended by respondent, that the county attorney had waived notice by agreeing to a submission of the cause without hearing or argument, and in denying the motion it did not abuse the discretion lodged in it by section 9187. *Huntington v. Yellowstone County*, 80 M 20, 23, 257 P 1041.

4612. Warrants—specification—presentation and payment. Warrants drawn by order of the board on the county treasurer for the current expenses during each year must specify the liability for which they are drawn and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

History: En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R. C. M. 1921. Cal. Pol. C. Sec. 4076.

Cascade County, 22 M 580, 588, 57 P 274.

References

State v. District Court et al., 62 M 275, 281, 204 P 600; *State ex rel. Case v. Bolles et al.*, 74 M 54, 65, 238 P 586.

Operation and Effect

An action cannot be maintained against a county on a county warrant. *Greeley v.*

4613. Annual examination of warrants by board. The board, at its annual March session, or oftener if necessary, must examine the county warrants returned by the county treasurer, by comparing each warrant with the record of warrants issued in the county clerk's office. The board must cause to be entered on said record, opposite to the entry of each warrant issued, the date when the same was canceled; and make a list of the warrants so canceled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the minutes of the board. The board must cause to be canceled all county warrants that have remained one year or more uncalled for in the county clerk's office, the same to be canceled in the same manner as other county warrants. At the same time the county treasurer must deliver to the board all warrants or vouchers that he may have in his possession for moneys disbursed by him as treasurer, and the clerk must receipt for the same.

History: Ap. p. Sec. 28, p. 504, *Bannack Stat.*; amd. Sec. 28, p. 438, *Cod. Stat.* 1871; re-en. Sec. 362, 5th Div. *Rev. Stat.* 1879; re-en. Sec. 767, 5th Div. *Comp. Stat.* 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, *Rev. C.* 1907; re-en. Sec. 4613, *R. C. M.* 1921.

CHAPTER 355

COUNTY BUDGET SYSTEM

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| Section 4613.1. | County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file. |
| 4613.2. | Tabulation by clerk of expenditure program—classifications—items included in. |
| 4613.3. | Consideration of budget by commissioners—notice of budget meeting. |
| 4613.4. | Hearings on budget—adoption—fixing of tax levy. |
| 4613.5. | Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget. |

- 4613.6. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.
- 4613.7. County clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources—auditor to furnish statement of liabilities for which warrants not issued.
- 4613.8. State examiner to make rules and regulations for carrying out act—accounting systems.
- 4613.9. Construction of act.
- 4613.10. Violation of act constitutes misdemeanor.

4613.1. County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file. On or before the first day of July of each year the county clerk and recorder of each county shall notify in writing each county official, elective or appointive, in charge of an office, department, service or institution of the county to file with such county clerk and recorder, on or before the tenth day of July following, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service or institution for the current fiscal year. The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for such board, and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, any special road district funds, and from any special highway fund, and from bond issues theretofore issued or authorized, if any, for the current fiscal year, together with the cost thereof as computed by the county surveyor, or if for construction in charge of a special engineer then by such engineer, and it shall be the duty of the county surveyor and any such special engineer to prepare such estimates of cost for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be thereafter held.

The estimates required in this section shall be submitted on forms provided by the county clerk and recorder, and prescribed by the state examiner, and may only be varied or departed from with permission and approval of said officer. The county treasurer shall prepare the estimates for interest and debt reduction. The county clerk and recorder shall prepare all other estimates the preparation of which properly falls within the duties of his office.

It shall be the duty of each of said officials to file such estimates within the time and in the manner provided in said form and notice, and the county clerk shall deduct and withhold, as a penalty, from the salary of each official failing or refusing to file such estimates as herein provided, the sum of ten dollars for each day of delay; provided, however, that the total penalty against any one official shall not exceed fifty dollars in any one year; and provided further, that in the absence or disability of any such official the duties required herein shall devolve upon the official or

employee in charge of such office, department, service or institution for the time being. The said notice shall contain a copy of this penalty clause.

History: En. Sec. 1, Ch. 148, L. 1929.

4613.2. Tabulation by clerk of expenditure program—classifications—items included in. From such estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year, and the sources of revenue by which it is to be financed. Such tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of such last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

Such estimates, appropriations and expenditures shall be classified under the general classes of (1) salaries and wages; (2) maintenance and operation; (3) capital outlay; (4) interest and debt redemption; (5) miscellaneous; and (6) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be thereafter held.

Within the general class of salaries and wages each salary shall be set forth separately together with the title or position of the recipient, provided that an unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per diem for each class or kind of labor shall be set forth. Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the state examiner. Expenditures for capital outlay shall set forth and describe each object of expenditure separately. Under the general class of interest and debt redemption proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of miscellaneous expenditures for all purposes not listed in, or which cannot properly be assigned to any of the foregoing general classes, shall be set forth and itemized in detail.

The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 2, Ch. 148, L. 1929.

4613.3. Consideration of budget by commissioners—notice of budget meeting. The said tabulation shall be submitted to the county commission-

ers by the county clerk and recorder on or before the twentieth day of July. Upon receipt thereof the board of county commissioners shall immediately consider the same in detail, and shall on or before the twenty-fifth day of July make any revisions, reductions, additions or changes therein that they deem advisable, and such tabulation, with such revisions, reductions, additions or changes as have been made therein, as herein provided, shall constitute the preliminary county budget for the fiscal year which it is intended to cover. The board of county commissioners shall then cause a notice to be published stating that said board has completed their preliminary county budget for the current fiscal year, and that said budget has been placed on file and is open to inspection in the office of the county clerk and recorder, and that said board will meet on the Wednesday immediately preceding the second Monday in August thereafter, for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting will be held, and that any taxpayer may appear thereat and may be heard for or against any part of said budget. Said notice shall be published at least one time in the official newspaper of the county, or if there be none, then in a newspaper of general circulation in the county.

History: En. Sec. 3, Ch. 148, L. 1929.

4613.4. Hearings on budget—adoption—fixing of tax levy. On the Wednesday immediately preceding the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided in section 4613.3, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing may be continued from day to day but must be concluded not later than the second Monday in August and prior to the fixing of tax levies by such board. The board of county commissioners shall have power to call in the official in charge of any office, department, service or institution, at the time the estimates for their respective offices are under consideration, for examination concerning such estimates, and such official shall be called in by such board upon the request of any taxpayer for questioning, either by the board or any taxpayer upon such estimates.

Upon the conclusion of such hearing the county commissioners shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board.

Said budget as finally adopted shall specify the fund or funds against which warrants may be issued for the expenditures so authorized, respectively and the aggregate of all expenditures authorized against any fund shall not exceed the estimated revenues to accrue to such fund during the current fiscal year from all sources including taxation.

On the second Monday in August, and after adoption of such final budget, the board of county commissioners shall fix the amount of the tax levy for each fund necessary to raise the amount of estimated expenditures to be made therefrom, as finally determined, less the estimated revenues from sources other than taxation, available surpluses and expenditures that are to be made from bond issues.

The county clerk and recorder shall immediately forward a copy of the final budget together with the tax levies to the state examiner.

History: En. Sec. 4, Ch. 148, L. 1929.

4613.5. Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget. The estimates of expenditures, itemized and classified as required in section 4613.2, and as finally fixed and adopted by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby, and the county commissioners, and every other county official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively; provided that upon a resolution adopted by the board of county commissioners at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided, that no salary shall be increased above the amount appropriated therefor. Transfers between the general classes provided in section 4613.2 shall not be permitted, provided and except that in the case of appropriations to be expended from county road or bridge funds, special road district funds, or any special highway fund, any transfer between or among the general classes of (1) salaries and wages, (2) maintenance and support, and (3) capital outlay, may be made.

Moneys received from borrowings shall be used for no other purpose than that for which borrowed, except that if any surplus remain after the accomplishment of the purpose for which borrowed it shall be used to redeem the county debt. Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available, and where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved. Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the county, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The board of county commissioners shall not approve any claim, and the county clerk and recorder shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any county commissioner or commissioners, or county clerk and recorder approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the county fourfold the amount of such claim or warrant, which shall be recovered in an action against such county commissioner, or commissioners, or county clerk and recorder, or all of them, and their several sureties on

their official bonds, and it shall be the duty of the county attorney of such county to bring an action therefor in the name of the county.

History: En. Sec. 5, Ch. 148, L. 1929.

4613.6. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations. In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all of the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the county, and if there be none then in a newspaper of general circulation in the county. Upon the conclusion of such hearing, if the commissioners shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject however, to the following limitations: No expenditures shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said county feeling aggrieved by said order may appeal therefrom to the district court for such county by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the county clerk and recorder of said county as the clerk of the board of county commissioners. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any liability thereunder, until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter *de novo* and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, or for the immediate pres-

ervation of order or of public health, or for the restoration of a condition of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants then such warrants shall be registered, bear interest and be called in for payment in the manner provided by law for other county warrants.

The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year, and the county commissioners shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emergency warrants at an election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 6, Ch. 148, L. 1929.

4613.7. County clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources—auditor to furnish statement of liabilities for which warrants not issued. On the first Monday in each month the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and lia-

bilities against each separate budget appropriation incurred during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes, and in detail the receipts from all other sources by each fund for the same period. In counties having county auditors the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of said business day.

History: En. Sec. 7, Ch. 148, L. 1929.

4613.8. State examiner to make rules and regulations for carrying out act—accounting systems. The state examiner hereby is empowered, and it is made his duty to make such rules, regulations and classifications, and prescribe such forms as may be necessary to carry out the provisions of this act, to define what expenditures shall be chargeable to each budget account, and to establish such accounting and cost systems as may be necessary to provide accurate budget information.

History: En. Sec. 8, Ch. 148, L. 1929.

4613.9. Construction of act. This act shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: En. Sec. 9, Ch. 148, L. 1929.

4613.10. Violation of act constitutes misdemeanor. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 10, Ch. 148, L. 1929.

4614-4617. Repealed—Chapter 188, laws of 1931.

4618. Omitted.

4619-4622. Repealed—Chapter 188, laws of 1931.

CHAPTER 356

COUNTY FINANCES, BONDS, AND WARRANTS

- Section 4622.1.** Investment of sinking funds of counties, cities and towns—protection and keeping of securities.
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- 4630.31. Cancellation of bonds, coupons and warrants.
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- 4630.33. Application to outstanding bonds.
- 4631. County commissioners to transfer funds.
- 4632. Petty cash fund.
- 4639.1. Investment of county moneys in county warrants.

4622.1. Investment of sinking funds of counties, cities and towns—protection and keeping of securities. That the board of county commissioners of any county of the state of Montana and the council of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking fund of any such county, city or town, as is not needed for the payment of interest coupons, in United States government bonds or securities, state bonds or securities, county or city bonds, or other bonds or securities which are supported by general taxation, except irrigation bonds, provided however that all of such investments must first be approved by the state examiner and that said bonds or securities must be due and payable at least ninety days before the obligations for which such bonds were raised shall become due and payable. Such bonds and security shall be in the custody of such county, city or town treasurer, and be held by him for the use and benefit of such county, city or town as the case may be. It shall be the duty of such treasurer to properly protect such securities by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the same sinking fund from which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923.

4623-4624. Repealed—Chapter 188, laws of 1931.

4625. County warrants—interest. All county warrants, after having been presented to the county treasurer and by him endorsed, "not paid for want of funds in the treasury," from and after the date of presentation and indorsement draw interest at the rate of six per cent. per annum.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907; re-en. Sec. 4625, R. C. M. 1921.

Operation and Effect
Under the act of February 8, 1865, authorizing county commissioners to pay in-

terest on county warrants, it was held that the neglect of the county treasurer to indorse a county warrant, "not paid for want of funds in the treasury," does not release the county from its liability to pay the interest authorized by statute, and that the indorsement should show that the warrant had been presented for pay-

ment at a certain time and payment refused for want of funds in the treasury. *Territory ex rel. Largey v. Gilbert*, 1 M 371, 375, 378.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

4626. Lost bond or warrant. The board is authorized, upon satisfactory proof that any original bond, warrant, or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant, or coupon a duplicate thereof, which will take the place in order of registration and payment of such original bond, warrant, or coupon, and in all cases supersede and take the place of such original.

History: En. Sec. 1, L. 1881; re-en. Sec. 4251, Pol. C. 1895; re-en. Sec. 2916, Rev. C. 1907; re-en. Sec. 4626, R. C. M. 1921.

4627. Indemnity to be given. Before issuing such duplicate bond, warrant, or coupon, the board must require the person demanding the same to execute and deliver to the treasurer of the county a bond, payable to the county, in double the amount of the bond, warrant, or coupon, with at least two good and sufficient sureties, who must be required to justify as in case of attachment, the conditions of such bond being that the principal and sureties therein will indemnify and save harmless the county from all loss, costs, or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon such duplicate.

History: En. Sec. 2, p. 83, L. 1881; re-en. Sec. 4252, Pol. C. 1895; re-en. Sec. 2917, Rev. C. 1907; re-en. Sec. 4627, R. C. M. 1921.

4628. Duplicate bonds, warrants or coupons, how given. The chairman of the board, at the time of issuing any duplicate bond, warrant, or coupon, must write across or upon the face thereof the word "duplicate," in red ink.

History: En. Sec. 3, p. 83, L. 1881; re-en. Sec. 4253, Pol. C. 1895; re-en. Sec. 2918, Rev. C. 1907; re-en. Sec. 4628, R. C. M. 1921.

4629. What notice imparted. The word "duplicate" upon any bond, warrant, or coupon imparts notice to all persons that the same is issued subject to the provisions of this article.

History: En. Sec. 4, p. 83, L. 1881; re-en. Sec. 4254, Pol. C. 1895; re-en. Sec. 2919, Rev. C. 1907; re-en. Sec. 4629, R. C. M. 1921.

4630. Duty of county treasurer in reference to lost bonds. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon, by the lawful owner or holder thereof, to assign by indorsement and to deliver to him the bond mentioned in section 4627, and such owner or holder may maintain an action in his own name upon such bond for the recovery of any moneys paid upon such duplicate, but the delivery of such bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying bond to pay the same.

History: En. Sec. 5, p. 83, L. 1881; re-en. Sec. 4255, Pol. C. 1895; re-en. Sec. 2920, Rev. C. 1907; re-en. Sec. 4630, R. C. M. 1921.

4630.1. Board of county commissioners may issue bonds for certain purposes. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

Subdivision (a). For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

Subdivision (b). For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same.

Subdivision (c). For the purpose of acquiring rights-of-way for and constructing public highways and bridges, or either of them.

Subdivision (d). For the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line.

Subdivision (e). For the purpose of funding, paying and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund or poor fund, when there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants and the levying of taxes sufficient to pay and retire such warrants within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

Subdivision (f). For the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds when there are not sufficient funds available to pay such bonds and it is deemed for the best interests of the county to refund such bonds.

Subdivision (g). For the purpose of funding, paying and retiring outstanding seed grain warrants lawfully issued under the provisions of section 4651, and for the purpose of funding, paying and retiring outstanding special relief warrants lawfully issued under the provisions of section 4692, when there is not sufficient money available to pay such warrants and the levying of special taxes sufficient to pay the same within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

History: En. Sec. 1, Ch. 188, L. 1931.

NOTE.—Sections 4651 and 4692, referred to in subdivision (g), have been repealed.

4630.2. Single purpose. Acquiring land for a site for a public building, or for any other public use within the county, and constructing, erecting or acquiring by purchase any building on such land and furnishing and equipping the same, shall be deemed a single purpose; acquiring a right-of-way for and constructing a public highway, including any bridge or bridges thereon, shall be deemed a single purpose; the construction of two or more bridges forming a part of the same public highway shall be deemed a single purpose; the construction of two or more bridges, when not forming a part

of the same public highway, shall be deemed separate purposes; a contribution by a county to the cost of a federal aid bridge shall be deemed a separate purpose, and a contribution by a county to the cost of a federal aid highway project on a highway leading to said bridge shall be deemed a separate purpose.

History: En. Sec. 2, Ch. 188, L. 1931.

4630.3. Limitation on amount of bonds—issuance in excess of limitations void. No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum, but will not exceed five per centum of the value of such taxable property, when necessary to do so for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident, or when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 1276, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to March 1, 1923. All bonds issued by any county in excess of the limitations herein fixed shall be null and void. The words "value of the taxable property," as used in this section, are used in the same sense as in section 5 of article 13, of the constitution, and shall be given the same meaning and construction.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933.

NOTE.—Section 1276 referred to in this section has been repealed. See section 1262.14 of these codes.

4630.4. Term of bonds—power to redeem—maximum interest. No bonds issued for any of the purposes designated in subdivisions (a), (b), or (c), of section 4630.1, shall be for a longer term than twenty years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 4630.1, shall be for a longer term than ten years; no bonds issued under subdivision (f) of section 4630.1 shall be issued for a longer period than ten years except when such bonds, together with all other outstanding indebtedness, shall exceed five per centum of the value of the taxable property, then such bonds may be issued for a term not to exceed twenty years; and no bonds issued for any of the purposes designated under subdivision (g), of section 4630.1, shall be for a longer term than five years. All bonds issued for a longer term than five years may be redeemable, at the option of the county, at any time before maturity when so stated in the bonds. The maximum rate of interest which any of such bonds may bear shall be six per centum per annum, and shall be payable semi-annually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933.

4630.5. Form of bonds. All bonds hereafter issued by any county shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bonds," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at one hundred dollars (\$100.00) or some multiple thereof.

History: En. Sec. 5, Ch. 188, L. 1931.

4630.6. Bonds issued for certain purposes may be issued without holding an election. Bonds issued for the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line; for the purpose of funding, paying and retiring outstanding county warrants issued prior to July 1, 1931; for the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds issued prior to May 1, 1923; and for the purpose of funding seed grain warrants and special relief warrants, as set forth in subdivisions (d), (e), (f) and (g) of section 4630.1, may be issued without submitting the same to an election. In order to issue bonds for any of said purposes it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds.

History: En. Sec. 6, Ch. 188, L. 1931.

4630.7. Petition and election required for bonds issued for other purposes. County bonds for any other purpose than those enumerated in section 4630.6 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted

to the qualified electors of the county and approved, as provided in section 4630.13; and no such bond election shall be called unless there has been presented to the board of county commissioners a petition, asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified electors of the county, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes.

History: En. Sec. 7, Ch. 188, L. 1931.

4630.8. Form, contents and proof of petition. Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk as hereinafter provided. The petition shall give the postoffice address and voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the county clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes.

History: En. Sec. 8, Ch. 188, L. 1931.

4630.9. Consideration of petition—calling election. When such petition has been filed with the county clerk and he has found that it has a sufficient number of signers, qualified to sign the same, he shall place the same before the board of county commissioners at its first meeting held after he has attached his certificate thereto. The board shall thereupon carefully examine the petition and make such other investigation as it may deem necessary.

If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its filing and presentation, the purpose, or purposes, for which the bonds are proposed to be issued, and fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition, determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in section 4630.4, and making provision for having such question submitted to the qualified electors of the county at the next general election, or at a special election which the board may call for such purpose.

History: En. Sec. 9, Ch. 188, L. 1931.

4630.10. Notice of election—election hours—election officers. Whether such election is held at the general election, or at a special election, separate notice shall be given thereof. Such notice shall state the date when such election will be held, the hours between which the polls will be open, the amount of bonds proposed to be issued, the purpose of the issue, the term of years through which the bonds are to be paid, and such other information regarding the holding of the election and the bonds proposed to be issued as the board may deem proper. If bonds are to be issued for two (2) or more purposes, each purpose and the amount therefor must be separately stated. Such notice shall be posted in each voting precinct throughout the county in the same manner as notices for a general election are required to be posted. Such notice must also be published once each week for four (4) consecutive weeks preceding the election in the official newspaper of the county.

If the question of issuing bonds is submitted at a special election called for such purpose the board of county commissioners shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of election judges than is required for a general election, but in no case shall there be less than three (3) judges in the precinct, and such judges shall act as their own clerks.

If the question of issuing bonds is submitted at a general election, the polls shall be kept open during the same hours as are fixed for such general election and the judges and clerks for such general election shall act as the judges and clerks for such bond election.

History: En. Sec. 10, Ch. 188, L. 1931.

4630.11. Form of ballots and conduct of election. The form of ballots shall be as prescribed by section 4722; but if bonds are sought to be issued for two (2) or more separate purposes, then separate ballots must be provided for each purpose. The election shall be conducted in the manner prescribed by said section 4722, and the general election laws of the state shall govern insofar as they are applicable; but if such question be submitted at a general election the votes thereon must be counted separately and separate returns must be made by the judges and clerks at such election.

History: En. Sec. 11, Ch. 188, L. 1931.

4630.12. Who are entitled to vote. All qualified electors of the county, whose names appear upon the registration list of the county and upon the poll books of the precinct in which they seek to vote, shall be qualified to vote at all county bonding elections, and no property assessment or tax paying qualification shall be required.

History: En. Sec. 12, Ch. 188, L. 1931.

4630.13. Percentage of electors required to authorize bond issue. Whenever the question of issuing county bonds for any purpose is submitted to the qualified electors of a county, at either a general or special election, not less than forty per centum (40%) of the qualified electors entitled to vote on such question must vote thereon, otherwise such proposition shall be deemed to have been rejected; provided, however, that if forty per centum (40%), or more of such qualified electors do vote on such question, at such election, and a majority of such votes shall be cast in favor of such proposition, then such proposition shall be deemed to have been approved and adopted.

History: En. Sec. 13, Ch. 188, L. 1931.

4630.14. Canvass of election returns—resolution for bond issue. If the bonding election be held at the same time as a general election, then the returns shall be canvassed at the same time as the returns from such general election; but if the bonding election is a special election, then the board of county commissioners shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more, of the qualified electors entitled to vote at such election voted on such question, and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, the optional provisions, if any; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two or more series or installments.

History: En. Sec. 14, Ch. 188, L. 1931.

Operation and Effect

In view of the purpose of chapter 24, laws extraordinary session 1933-34, i.e., to permit counties to secure the benefits of the national industrial recovery act by borrowing money from the federal government for emergency relief, and the fact that it was apparent at the time the act was passed that the conditions and requirements of the government would conflict with the general laws of the state with relation to issuance and sale of bonds, held, that failure of a board of county

commissioners strictly to comply with the provisions of this section and section 4630.15, as to the form of resolution to be passed by it providing for the issuance of bonds voted to obtain a federal loan was not fatal to their validity; having followed those provisions as closely as it was possible for it to do, and at the same time conform to the requirements of the federal government, their action was sufficient; so far as not in harmony with the federal requirements, this section and the following section must be held inapplicable. *Shekelton v. Toole County et al*, 97 M 213, 216 et seq., 33 P 2d 531.

4630.15. Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of county, state of Montana, that the said board will on the day of, 19....., at the hour of o'clockM., at the office of the board in the court house in the (town or city) of in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the said county in the total amount of dollars (\$.....), for the purpose of

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the said board may determine upon at the time of sale, both principal and interest to be payable in semi-annual installments during a period of years from the date of issue.

If serial bonds are issued and sold they will be in the amount of dollars (\$.....) each, except the last bond which will be in the amount of dollars (\$.....); the sum of dollars (\$.....) of the said serial bonds will become payable on the day of, 19....., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of dollars (\$.....).

The said bonds, whether amortization or serial bonds, will bear date of, 19....., and will bear interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, on the day of (month) and (month) in each year, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds.)

The said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners of the state of Montana must be accompanied by a certified check in the sum of dollars, (\$.....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the said bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

Chairman, Board of County Commissioners
of ----- county,
State of Montana.

Clerk of the Board of County Commissioners
of ----- county, Montana.
Address ----- Montana.

History: En. Sec. 15, Ch. 188, L. 1931.

Operation and Effect

In view of the purpose of chapter 24, laws extraordinary session 1933-34, i.e., to permit counties to secure the benefits of the national industrial recovery act by borrowing money from the federal government for emergency relief, and the fact that it was apparent at the time the act was passed that the conditions and requirements of the government would conflict with the general laws of the state with relation to issuance and sale of bonds, held, that failure of a board of county

commissioners strictly to comply with the provisions of the preceding section and this section, as to the form of resolution to be passed by it providing for the issuance of bonds voted to obtain a federal loan was not fatal to their validity; having followed those provisions as closely as it was possible for it to do, and at the same time conform to the requirements of the federal government, their action was sufficient; so far as not in harmony with the federal requirements, this section and the preceding section must be held inapplicable. *Shekelton v. Toole County et al.*, 97 M 213, 216 et seq., 33 P 2d 531.

4630.16. Publication of notice of sale. The board of county commissioners shall cause such notice to be published once each week for four successive weeks immediately preceding the date of sale in the official newspaper of the county; and the board may in its discretion cause such notice to be published in some financial newspaper published in the city of New York, or in the city of Chicago, or in financial newspapers published in each of said cities.

History: En. Sec. 16, Ch. 188, L. 1931.

4630.17. Notice to the state board of land commissioners. At the same time the notice is sent to the official newspaper of the county for publication the county clerk shall send a copy of such notice to the secretary of the state board of land commissioners and shall thereupon furnish to the said secretary a transcript of the proceedings had for the issuance of bonds, and such other information relating thereto as the secretary may find necessary.

History: En. Sec. 17, Ch. 188, L. 1931.

4630.18. Sale of bonds. The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the board shall take into consideration not only the rate of interest demanded on each kind, but also all other known ele-

ments affecting the interests of the county, and the board shall accept the bid which they shall judge most advantageous to the county; provided, that no bid shall be accepted which will require the bonds to bear a rate of interest exceeding six per centum (6%) per annum. No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not bear a greater rate of interest than six per centum (6%) and shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 18, Ch. 188, L. 1931.

4630.19. Form and execution of bonds. At the time of the sale of the bonds or at a meeting held thereafter the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto. Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk, and each bond shall have the county seal affixed thereto; provided, however, that lithographic or engraved facsimiles of the signatures of the chairman of the board, the treasurer and the county clerk may be affixed to the coupons in place of their signatures when such fact is so recited in the bond.

History: En. Sec. 19, Ch. 188, L. 1931.

4630.20. Printing of the bonds. Under the direction of the board, the county clerk shall cause the bonds, with coupons thereto attached, to be printed or lithographed at the expense of the county at lowest commercial rates; provided, however, that a purchaser of such bonds may furnish the same to the county for execution if the same is done at his own expense and without expense to the county.

History: En. Sec. 20, Ch. 188, L. 1931.

4630.21. Registration of bonds—copy to be preserved. When duly executed by the officers of the county as herein provided, the bonds shall be registered by the county treasurer in a book provided for that purpose before being delivered to the purchaser. Such registration shall show the number and amount of each bond, the date of issue, date redeemable and date when the same becomes due, the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be paid, and the name and address of the purchaser. The county clerk shall also deliver to the county treasurer an unsigned and cancelled printed copy of a bond of each issue, as so issued and registered, to be preserved in his office.

History: En. Sec. 21, Ch. 188, L. 1931.

4630.22. Delivery of bonds—payment for same. In case the state board of land commissioners is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the secretary of the board who shall cause the same to be delivered to the state treasurer and payment therefor

shall be made in the manner provided by law. In case the bonds are purchased by other investors the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of such bonds shall be paid to the county treasurer and shall be immediately available for the purpose or purposes for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931.

4630.23. Counties liable on bonds. All bonds issued under the provisions of this act shall be legal and valid obligations of the county issuing the same, and the full faith and credit of such county are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same became due.

History: En. Sec. 23, Ch. 188, L. 1931.

4630.24. Treasurer's certificate as to principal and interest to be paid. Whenever any county has any issue or series of bonds outstanding and there is not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the county treasurer of such county shall, between the first and fifth days of August in each year while such bonds, or any thereof, remain outstanding and unpaid, make out and deliver to the board of county commissioners of such county a statement showing the amount required to be raised by tax levy during the then current fiscal year for payment of interest and principal becoming due and payable during such fiscal year, or within ninety (90) days thereafter, on each issue or series of bonds outstanding, or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in section 4630.25.

History: En. Sec. 24, Ch. 188, L. 1931.

4630.25. Tax. The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax, upon all taxable property in the county, for the payment of interest on and principal of each series or issue of bonds outstanding, and the tax levy for any one series or issue of bonds must be entirely separate and distinct from such levy for any other series or issue of bonds. The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of such bonds as will become due and payable during the then current fiscal year or within ninety (90) days thereafter, as such amount is shown by the treasurer's statement provided by section 4630.24; and if no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within ninety (90) days thereafter, and to also place in the sinking fund for such issue or series of

bonds, for the payment of the principal thereof when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which such series or issue of bonds were originally issued by the number of years for which the same were originally issued to run.

History: En. Sec. 25, Ch. 188, L. 1931.

4630.26. Liability of members of board of county commissioners. If the board of county commissioners of any county shall fail, neglect or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds, as required by the provisions of section 4630.25, the holder of any bond of such issue or series, or any taxpayer paying taxes on property situated in such county, may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of county commissioners of such county to make a proper and sufficient levy for such purposes, and if, upon the hearing of such application it shall appear to the satisfaction of the court that the board of county commissioners has failed, neglected or refused to make any levy whatever for such purposes, or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of section 4630.25, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such board of county commissioners, at the next meeting thereof for the purpose of making and fixing county levies, to raise the amount of such deficiency, which levy shall be in addition to the levy required to be made for the then current fiscal year; provided, that any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners, and shall not be a charge against such county.

History: En. Sec. 26, Ch. 188, L. 1931.

4630.27. County bond funds. The county treasurer of each county shall keep in his books a special and separate sinking and interest fund account for each series or issue of outstanding bonds issued by his county, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and interest on such bonds so long as any of such bonds remain outstanding. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931.

4630.28. Payment of principal and interest. The county treasurer shall pay from the proper sinking and interest fund the interest and principal

of each issue or series of outstanding bonds, as such interest and principal become due and at the place where said bonds are payable, upon the presentation and surrender of the coupon or coupons, bond or bonds to be paid; provided, however, that if the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the county treasurer together with his receipt.

Any and all installments of interest or principal on bonds held by the state and not promptly paid at the office of the state treasurer when due, shall draw interest at the rate of six per centum (6%) per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 28, Ch. 188, L. 1931.

4630.29. Redemption of bonds before maturity. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest, becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds as the same will pay. Not less than fifteen (15) days before the next interest payment date, the county treasurer must give notice to the state board of land commissioners that on such interest payment date such bond or bonds will be paid, and the county treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon. Upon receipt of such amount the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto, and return the same, with his receipt, to the county treasurer.

Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding optional bonds of the issue or series to which such sinking and interest fund belongs, and which bonds are not yet due but are then redeemable or will become redeemable on the next interest payment date, and such bonds are not held by the state of Montana, the county treasurer, when directed by the board of county commissioners, must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem. The county treasurer must give notice to the holder of such bond or bonds, if known to him, or to any bank or financial institution at which such bonds are payable, at least fifteen (15) days before the next interest payment date, that such bonds will be paid and redeemed on such date. The county treasurer must also publish in the official newspaper of the county, once a week for two (2) consecutive weeks immediately preceding such interest payment date, a notice that such bond or bonds have been called in for redemption and will be paid in full on such interest payment date. If such bonds are payable at some bank or financial institution the county treasurer must remit to

such bank or financial institution, before such interest payment date, an amount sufficient to pay and redeem such bonds. If such bonds are not presented for payment and redemption on such interest payment date interest thereon shall cease on such date.

All bonds paid and redeemed under the provisions of this section must be paid and redeemed in the numerical order in which the same were issued.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933.

4630.30. Investment of sinking and interest fund. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commissioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

If the board cannot purchase any of the outstanding bonds at such reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, or in bonds or treasury certificates of the United States; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least thirty (30) days before the date when the bonds of the county of such series or issue will become redeemable.

History: En. Sec. 30, Ch. 188, L. 1931.

4630.31. Cancellation of bonds, coupons and warrants. All bonds and interest coupons paid by the county treasurer from time to time shall be cancelled by him, and he shall enter on the record of the registration of such bonds the date of the payment of the same and the several coupons attached thereto, and he shall deliver the same, after such cancellation, to the county clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon, and the county clerk shall exhibit such bonds and coupons, with such report, to the board of county commissioners at the next regular meeting thereof.

Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds it shall be the duty of the county treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds to be so funded or refunded, and he shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the county clerk, with a report showing the numbers thereof and the amounts paid for principal and interest, and the county clerk shall exhibit such warrants and bonds with such

report to the board of county commissioners at the next regular meeting thereof.

History: En. Sec. 31, Ch. 188, L. 1931.

4630.32. Exchange of bonds for amortization bonds. Subject to the approval of the state board of land commissioners the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 4630.5, and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the state board of land commissioners, but which shall not exceed six per centum (6%) per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell and issue refunding bonds in the manner provided by this act.

History: En. Sec. 32, Ch. 188, L. 1931.

4630.33. Application to outstanding bonds. All of the provisions of this act with reference to the payment of interest and principal of bonds, redemption and payment thereof, investment of sinking and interest funds, levy of taxes for payment of principal and interest, maintenance of separate sinking and interest funds, and all other provisions of this act which can be made applicable thereto, shall apply to all bonds heretofore lawfully issued by any county under any law or laws of this state, and which bonds shall be outstanding at the time this act takes effect.

History: En. Sec. 33, Ch. 188, L. 1931.

4631. County commissioners to transfer funds. The board is authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county; but no moneys belonging to the school fund must be taken therefrom except for school purposes.

History: En. Sec. 371, 5th Div. Rev. Stat. 1879; re-en. Sec. 775, 5th Div. Comp. Stat. 1887; re-en. Sec. 4256, Pol. C. 1895; re-en. Sec. 2921, Rev. C. 1907; re-en. Sec. 4631, R. C. M. 1921.

References

State v. District Court et al., 62 M 275, 280, 204 P 600.

4632. Petty cash fund. The board of county commissioners, with the approval of the state examiner, may set aside a sum of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage and other similar items which must be paid in cash at time of delivery,

in counties having a county auditor, the county auditor shall be responsible for expenditures from the petty cash fund. In counties not having a county auditor, the county clerk shall be responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R. C. M. 1921; amd. Sec. 1, Ch. 141, L. 1925.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

4633-4639. Omitted.

4639.1. Investment of county moneys in county warrants. Whenever the county has under its control any moneys in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder.

History: En. Sec. 1, Ch. 144, L. 1927.

4640-4679. Repealed—Chapter 29, laws of 1935.

CHAPTER 357

RELEASE OF LIEN OF COUNTY SEED GRAIN LOANS

Section 4679.1. Release of lien of county seed grain loans.

4679.2. Procedure for executing release.

4679.3. Intent and purpose of act.

4679.1. Release of lien of county seed grain loans. That in all cases where the eight (8) year statute of limitations provided by the laws of Montana for limiting actions on contracts in writing, shall have run against the enforcement of any seed grain contract, note or obligation executed to any county under the provisions of the Montana seed grain act of 1918, sections 4640 to 4679, inclusive, revised codes of Montana, 1921, the county commissioners of the several counties of the state, are hereby authorized and empowered to direct the county clerk to execute and deliver on behalf of the county, a release of any real or personal property described in any such seed grain contract, from the lien of said contract and from the lien of any so-called "tax" which has heretofore been imposed upon said property, real or personal, under the provisions of said grain act.

History: En. Sec. 1, Ch. 121, L. 1935.

NOTE.—Sections 4640 to 4679, inclusive, revised codes of Montana, 1921, were repealed by chapter 29 of the laws of 1935.

4679.2. Procedure for executing release. For the purpose of carrying out this act, the county commissioners shall enter upon their minutes a brief description of the contract in question and an order directing the county clerk to execute a release in accordance with the terms of this act and the county clerk shall thereupon be fully empowered, and it shall be his duty to execute such release on behalf of the county, the same to be acknowledged by him as required by law for the acknowledgment of grants of real property.

History: En. Sec. 2, Ch. 121, L. 1935.

4679.3. Intent and purpose of act. Nothing herein contained shall be deemed as a release, diminution, remittance or postponement of the said amount due the county under said seed grain contract, it being the intent of this act merely to provide for the release and discharge of the technical cloud on the title to property, caused by such contracts in cases where the running of the statute of limitations has precluded the property of recovering the amount due the county.

History: En. Sec. 3, Ch. 121, L. 1935.

4680-4711. Repealed—Chapter 22, laws of 1935.

4712. Repealed—Chapter 188, laws of 1931.

CHAPTER 358

BOND ISSUE AND TAX LEVY FOR BRIDGE CONSTRUCTION

- Section 4713. Increased tax levy for road and bridge construction.
4714. Submission of question to electors.
4715. Majority vote required.
4716. Collection of tax.

4713. Increased tax levy for road and bridge construction. The board of county commissioners may, in their discretion, for the purpose of constructing roads and bridges, make an increased levy upon the taxable property of the county of ten mills or less; provided, that such proportion of the funds derived under the provision of this act as are expended on state and main highways shall be expended under plans approved by the state highway commission.

History: En. Sec. 1, Ch. 160, L. 1919; re-en. Sec. 4713, R. C. M. 1921.

4714. Submission of question to electors. Before such increased levy shall be made, the question shall be submitted to a vote of the people at some general or special election, and shall be submitted in the following form, inserting the number of mills proposed to be levied:

“Shall there be an increased levy of.....mills upon the taxable property of the county of....., state of Montana, for the purpose of constructing roads and bridges?

<input type="checkbox"/>	Yes.
<hr/>	
<input type="checkbox"/>	No.”

History: En. Sec. 2, Ch. 160, L. 1919; re-en. Sec. 4714, R. C. M. 1921.

4715. Majority vote required. A majority of the votes cast shall be necessary to adopt such measure.

History: En. Sec. 3, Ch. 160, L. 1919; re-en. Sec. 4715, R. C. M. 1921.

4716. Collection of tax. Such levy shall be collected in the same manner as other road taxes are collected.

History: En. Sec. 4, Ch. 160, L. 1919; re-en. Sec. 4716, R. C. M. 1921.

CHAPTER 359

QUESTION OF RAISING MONEY TO BE SUBMITTED TO A VOTE.

Section 4717. Commissioners not to borrow money except as herein provided.

4718. Commissioners to determine amount necessary.

4719. Notice of election to be given.

4720. Ballots—what to contain.

4721. When loan may be made.

4722. Form of ballots—voting.

4717. Commissioners not to borrow money except as herein provided. The board of county commissioners must not borrow money for any of the purposes mentioned in this title, or for any single purpose to an amount exceeding ten thousand dollars, without the approval of a majority of the electors of the county, and without first having submitted the question of a loan to a vote of such electors; provided, that it shall not be necessary to submit to the electors the question of borrowing money to refund outstanding bonds, or for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919; re-en. Sec. 4717, R. C. M. 1921.

Operation and Effect

The term "incur indebtedness or liability," as used in section 5, article XIII, of the constitution, is not synonymous with the term "borrow money" used in this section; the former having to do with the creation of new indebtedness, while the latter deals with borrowing money through the instrumentality of issuing bonds for any of the purposes mentioned in the title of which the section forms a part. *Edwards v. County of Lewis and Clark*, 53 M 359, 369, 370, 165 P 297.

See also *State v. State Board of Examiners*, 59 M 557, 567, 197 P 988.

The restraint laid upon the legislature by the constitutional provision, limiting the amount of new indebtedness that a county could incur, did not operate to prevent it from imposing upon counties further limitations in the management of county finances. *Edwards v. County of Lewis and Clark*, 53 M 359, 379, 165 P 297.

Id. The board of county commissioners cannot borrow money to refund outstanding indebtedness exceeding ten thousand dollars, by the issuance of bonds or otherwise, without having first obtained the

approval of the electors of the county.

The meaning of this section and section 5, article XIII, of the constitution, declaring that counties shall not incur any indebtedness in an amount exceeding \$10,000, without the approval of a majority of the electors "voting at an election," etc., coupled with section 4721, providing that such a loan may be made "if a majority of the votes cast" is in favor of it, is the same, and the approval of a majority of the electors voting at an election to determine whether a proposed indebtedness shall be incurred was sufficient to legalize a bond issue. *Morse v. Granite County*, 44 M 78, 95, 96, 119 P 286.

Id. Though the language of this section deviates from that employed in section 5 of article XIII of the constitution, it was evidently enacted in pursuance thereof, and must be held to mean the same.

References

Cited or applied as section 4270, political code, before amendment, with succeeding sections, in *Tinkel v. Griffin*, 26 M 426, 429, 68 P 859; as section 2933, revised codes, in *State ex rel. Rowe v. Kehoe*, 49 M 582, 592, 144 P 162; *State ex rel. Cryderman v. Wienrich*, 54 M 390, 399, 170 P 942; *Parker v. City of Butte*, 58 M 531, 533, 193 P 748; *State v. Board of Trustees et al.*, 91 M 300, 306, 7 P 2d 543.

4718. Commissioners to determine amount necessary. Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

History: En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R. C. M. 1921.

Operation and Effect

Upon submitting the question of a bond issue to the voters, the determination by the board of the amount of the issue is a necessary prerequisite to the validity of subsequent proceedings, and in so doing the board may proceed upon its own initiative and determine the necessity of the loan, without waiting the filing of a petition. *Morse v. Granite County*, 44 M 78; 90, 119 P 286.

The only question which the board of county commissioners was required to submit to the electors upon the proposition of procuring funds to erect a court-house was whether a loan in the amount found

necessary should be effected for such purpose. *Morse v. Granite County*, 44 M 78, 91, 92, 93, 119 P 286; *Carlson v. City of Helena*, 39 M 82, 102 P 39, distinguished.

Where the board of county commissioners has determined the amount necessary for the general purpose of a proposed bond issue, such as the erection of a court-house, it is not required, before submitting the question to a vote, to ascertain the cost of a suitable site for the building, nor that of the necessary furnishings. *Morse v. Granite County*, 44 M 78, 90, 91, 119 P 286.

References

Cited or applied as section 4271, political code, in *Tinkel v. Griffin*, 26 M 426, 429, 68 P 859.

4719. Notice of election to be given. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given, and the election held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R. C. M. 1921.

Operation and Effect

This section has no reference to the printed form of the ballot, but merely requires that the provisions of the general election law touching the qualifications of the voters, the appointment of judges and clerks, the secrecy of the ballot, and the method of voting should be observed. *Tinkel v. Griffin*, 26 M 426, 430, 68 P 859.

The order and notice for a special election held for the issuance of bonds to create a highway system, with bridges, which included public ferries, was not invalid because merely stating those purposes generally, and not mentioning ferries, a "ferry" being a mere incident or movable portion of a highway where it crosses a stream. *Reid v. Lincoln County*, 46 M 31, 57, 58, 125 P 429. Distinguished in *State ex rel. Kehoe v. Stromme*, 49 M 25, 27, 139 P 1002.

4720. Ballots—what to contain. There must be written or printed on the ballots the words "For the loan" and "Against the loan," and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

History: En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R. C. M. 1921.

Operation and Effect

In an election held for the incurring of indebtedness by the issue of bonds for

the erection and furnishing of a county court-house, ballots on which were printed the words "for the loan" and "against the loan," without specifying the nature

and purpose of the proposed loan, were held sufficient. *Tinkel v. Griffin*, 26 M 426, 430, 68 P 859; *Reid v. Lincoln County*, 46 M 31, 61, 125 P 429.

4721. When loan may be made. If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county.

History: En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R. C. M. 1921.

References

Cited or applied as section 4274, political code, in *Tinkel v. Griffin*, 26 M 426, 429, 68 P 859; as section 2937, revised codes, in *Morse v. Granite County*, 44 M 78, 94, 119 P 286.

4722. Form of ballots—voting. Hereafter whenever, in due course of law, in the manner and form required by law and according to the provisions and requirements of law, any question or proposition of or relating to bonded indebtedness, or of issuing bonds or of refunding, increasing, or creating a bonded indebtedness is submitted, ordered submitted, or to be submitted to the electors of any county, at a general or other election, when, at the same time, candidates for national, state, or county office or offices are to be voted upon or for by the qualified electors of such county, such question or proposition relating to bonds or bonded indebtedness shall not be placed or printed upon the official ballots furnished electors at such election for the purpose of voting for candidates for any office or offices, and containing the names of candidates for office or offices to be voted for at such election, but the county commissioners shall authorize, and the county clerk shall have printed and furnished to election judges and officials in each voting precinct of such county, separate ballots therefor, equal in number to the official ballots so furnished, and containing the names of such candidates for office. Said separate ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink, in one line or more, as required, the words "For" said bonding proposition (stating it and the terms thereof explicitly and at length), and thereunder the words "Against" said bonding proposition (stating it and the terms thereof explicitly and at length in like manner, as above); and there shall be before the word "For" and before the word "Against," each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in this manner:

<input style="width: 40px; height: 25px;" type="checkbox"/>	For (stating propositions.)
<input style="width: 40px; height: 25px;" type="checkbox"/>	Against (stating propositions.)

Such separate ballots shall be kept, stamped, given out, received, counted, returned, and disposed of by election judges in like manner as other official ballots herein referred to. Each qualified elector offering to vote and permitted to vote shall, at the time he is offered by the election judges an official ballot bearing the names of candidates for office, be

handed one of the separate ballots above described, and he may then and there, in a booth as provided by law, and not otherwise, vote on such separate ballot for or against said proposition by placing a cross or X before the word "For" or the word "Against," in the vacant square provided therefor; and such separate ballot shall be returned to the election judges by the voter, with said other official ballot, if the voter chooses to vote for candidates for office and is entitled to do so. The election judges shall deposit said separate ballot on the bonding proposition, separate from the voter's other official ballot, in the ballot-box.

History: En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R. C. M. 1921.

Operation and Effect

The ballot, in a special election to authorize the issuance of county bonds for a public highway system in a county, which recited that the issue was the bonding of the county in a designated amount to provide funds for a system of public highways, bridges, and free ferries, said bonds

to be payable in twenty years and redeemable in fifteen, was sufficient under this section. *Reid v. Lincoln County*, 46 M 31, 59, 125 P 429. See *Tinkel v. Griffin*, 26 M 426, 429, 68 P 859.

References

Cited or applied as section 2938, revised codes, in *Morse v. Granite County*, 44 M 78, 89, 119 P 286; *State v. Board of Trustees et al.*, 91 M 300, 306, 7 P 2d 543.

CHAPTER 360

COUNTY OFFICERS—ENUMERATION, QUALIFICATIONS, BONDS, AND GENERAL PROVISIONS

- Section 4723. General qualification for county office.
 4724. Same for district and township offices.
 4725. County officers enumerated.
 4726. Township officers.
 4727. County clerk is clerk of board and ex officio recorder—treasurer is collector of taxes.
 4728. County and other officers, when elected and term of office.
 4729. Election and terms of county commissioners.
 4730. District judges and justices of the peace—election and term of office.
 4731. County and township officers may generally appoint deputies at discretion.
 4732. Mode of making appointments of assistants.
 4733. Official mention of principal officer includes deputies.
 4734. Vacancies, how filled.
 4735. Keep office at county seat.
 4736. What offices to be kept open at county seat.
 4737. Civil penalty for misconduct in office attaches to official bond.
 4738. County officers may administer oaths.
 4739. Absence of county officers from state.
 4740. Certain officers prohibited from practicing law, etc.
 4741. Classification of counties.
 4742. County commissioners to designate class.
 4743. Official bonds.
 4744. Quarterly inspection of official bonds.
 4745. County officers must report fees.
 4746. Board of county commissioners must examine reports.
 4747. Clerk must report to state officer.
 4748. Auditor must make report.
 4749. Penalties.

4723. General qualifications for county office. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R. C. M. 1921. Cal. Pol. C. Sec. 4101.

4724. Same for district and township offices. No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R. C. M. 1921. Cal. Pol. C. Sec. 4102.

4725. County officers enumerated. The officers of a county are:

- A treasurer;
- A county clerk;
- A clerk of the district court;
- A sheriff;
- A county auditor, except in the sixth, seventh, and eighth class counties;
- A county attorney;
- A surveyor;
- A coroner;
- A public administrator;
- An assessor;
- A county superintendent of common schools;
- A board of county commissioners.

History: En. Sec. 4312, Pol. C. 1895; re-en. Sec. 2957, Rev. C. 1907; amd. Sec. 1, Ch. 112, L. 1913; re-en. Sec. 4725, R. C. M. 1921. Cal. Pol. C. Sec. 4103.

References

Cited or applied as section 4312, polit-

ical code, before amendment, in State ex rel. Donyes v. Board of Commrs. of Granite County, 23 M 250, 252, 58 P 439; State ex rel. McGinniss v. Dickinson, 26 M 391, 394, 68 P 468.

4726. Township officers. The officers of townships are two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R. C. M. 1921. Cal. Pol. C. Sec. 4104.

4727. County clerk is clerk of board and ex-officio recorder—treasurer is collector of taxes. The county clerk is clerk of the board of county commissioners and ex-officio recorder. The treasurer is collector of taxes.

History: En. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907; re-en. Sec. 4727, R. C. M. 1921. Cal. Pol. C. Sec. 4105.

4728. County and other officers, when elected and term of office. All elective county and township officers, except county commissioners, must be elected at the general election to be held in the year 1894, and at the general election to be held every second year thereafter, and must take office on the first Monday of January next succeeding their election, except county treasurer, whose term begins on the first Monday of March next succeeding his election, and hold office for two years.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R. C. M. 1921. Cal. Pol. C. Sec. 4109.

4729. Election and terms of county commissioners. The election and terms of office of county commissioners are provided for in the constitution.

History: En. Sec. 4316, Pol. C. 1895; re-en. Sec. 2961, Rev. C. 1907; re-en. Sec. 4729, R. C. M. 1921.

4730. District judges and justices of the peace—election and term of office. The election and terms of office of district judges and justices of the peace are provided for in the code of civil procedure.

History: En. Sec. 4317, Pol. C. 1895; re-en. Sec. 2962, Rev. C. 1907; re-en. Sec. 4730, R. C. M. 1921. Cal. Pol. C. Sec. 4110.

4731. County and township officers may generally appoint deputies at discretion. Every county and township officer, except county commissioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code.

History: En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R. C. M. 1921. Cal. Pol. C. Sec. 4112.

Operation and Effect

The provisions of this and the following section have no application to the appointment by the court of counsel to assist a county attorney in prosecuting persons charged with crime. *State v. Whitworth*, 26 M 107, 117, 66 P 748.

Under section 420, and this section held that a county attorney may appoint a dep-

uty to serve without compensation and that such deputy may legally act in the name of his principal in the filing of informations and the prosecution of criminal action. *State v. Crouch*, 70 M 551, 553, 227 P 818.

References

Cited or applied as section 4318, political code, with other sections, in *Jobb v. County of Meagher*, 20 M 424, 428, 51 P 1034. In *re Hyde*, 73 M 363, 366, 236 P 248.

4732. Mode of making appointments of assistants. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing, and filed in the office of the county clerk.

History: En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R. C. M. 1921. Cal. Pol. C. Sec. 4113.

References

Cited or applied as section 4319, political code, with other sections, in *Jobb v. County of Meagher*, 20 M 424, 429, 51 P 1034; *State v. Whitworth*, 26 M 107, 117, 66 P 748.

4733. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R. C. M. 1921. Cal. Pol. C. Sec. 4114.

4734. Vacancies, how filled. All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election.

History: En. Sec. 4321, Pol. C. 1895; re-en. Sec. 2966, Rev. C. 1907; re-en. Sec. 4734, R. C. M. 1921. Cal. Pol. C. Sec. 4115.

Operation and Effect

The general power to fill vacancies is lodged in the board, and though such power is always to be narrowly construed, in case a vacancy is not specifically provided for, it should be exercised in order to prevent an interregnum in the office and the consequent suspension of the public business. *State ex rel. Rowe v. Kehoe*, 49 M 582, 590, 144 P 162.

Where a person has been elected to succeed himself as county assessor, but dies after his election and before the beginning of the new term, another person appointed immediately after his death to fill the vacancy holds office only until the expiration of the original term of the deceased, and such appointee must, when the new term begins, surrender the office to one appointed to fill the office for the new term. *State ex rel. Dunne v. Smith*, 53 M 341, 343, 163 P 784.

4735. Keep office at county seat. All county officers must keep their offices at the county seat.

History: En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R. C. M. 1921. Cal. Pol. C. Sec. 4116.

References
Atkinson v. Roosevelt County et al., 66 M 411, 419, 214 P 74.

4736. What offices to be kept open at county seat. The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney must keep their offices open for the transaction of business from nine o'clock a. m. until five o'clock p. m. continuously every day in the year, except holidays, and at any other time when business requires it.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921. Cal. Pol. C. Sec. 4116.

References
In re Hyde, 73 M 363, 369, 236 P 248.

4737. Civil penalty for misconduct in office attaches to official bond. Whenever, except in criminal prosecutions, any special penalty, forfeiture, or liability is imposed on any officer for non-performance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R. C. M. 1921. Cal. Pol. C. Sec. 4117.

4738. County officers may administer oaths. Every officer mentioned in section 4725, and every justice of the peace, may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R. C. M. 1921. Cal. Pol. C. Sec. 4118.

4739. Absence of county officers from state. A county officer must, in no case, absent himself from the state for a period of more than sixty days, and for no period without the consent of the board of county commissioners, and if he does so absent himself he forfeits his office.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R. C. M. 1921. Cal. Pol. C. Sec. 4120.

he did not show that he first obtained the consent of the board of county commissioners to absent himself from the state, he was not entitled to recover on the theory that the claim was allowable under authority of subd. 2, section 4952, making the county chargeable with expenses necessarily incurred by the county attorney in criminal cases arising within the county. Brannin v. Sweet Grass Co., 88 M 412, 419, 293 P 970.

Operation and Effect

Where a sheriff predicated his demand for reimbursement for expenses incurred by him for services performed beyond the state line upon his legal rights incident to his position as sheriff, and not upon a contract of employment by the county attorney at whose direction he acted, and

4740. Certain officers prohibited from practicing law, etc. Sheriffs, clerks, and constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors-at-law, or having as a partner a lawyer or one who acts as such.

History: En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R. C. M. 1921. Cal. Pol. C. Sec. 4121.

4741. Classification of counties. For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and

full valuation of the property therein upon which the tax levy is made, as follows:

First class. All counties having such a taxable valuation of fifty millions of dollars or over;

Second class. All counties having such a taxable valuation of more than thirty millions and less than fifty millions of dollars;

Third class. All counties having such a taxable valuation of more than twenty millions and less than thirty millions of dollars;

Fourth class. All counties having such a taxable valuation of more than fifteen millions and less than twenty millions of dollars;

Fifth class. All counties having such a taxable valuation of more than ten millions and less than fifteen millions of dollars;

Sixth class. All counties having such a taxable valuation of more than five millions and less than ten millions of dollars;

Seventh class. All counties having such a taxable valuation of less than five millions of dollars;

Provided, however, that there shall be no reclassification of counties until after March 10, 1921, except in counties from which territory has been taken by the creation of new counties since January 1, 1919.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R. C. M. 1921.

books of the former county in determining the classification of the latter county as established by the assessed valuation of property within its boundaries. State ex rel. Herford v. Cook, 14 M 201, 202, 36 P 44.

Operation and Effect

When a portion of one county is attached to another county, the last assessment on the territory so attached may be ascertained by reference to the assessment-

References

State ex rel. Wallace v. Callow, 78 M 308, 254 P 187.

4742. County commissioners to designate class. The several boards of county commissioners must, at their regular session in September, 1906, make an order designating the class to which such county belongs, as determined by the assessed valuation of such county for the year 1906, under the provisions of this act, and in each even numbered year thereafter; provided, that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R. C. M. 1921.

rel. McGinnis v. Dickinson, 26 M 391, 392, 68 P 468; as section 2975, revised codes, in State ex rel. Hauswald v. Ellis, 52 M 505, 507, 159 P 414; State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; State ex rel. Wallace v. Callow, 78 M 308, 316, 254 P 187.

References

Cited or applied as section 4331, political code, before amendment, in State ex

4743. Official bonds. The bonds of county officers are fixed by sections 466 and 467 of these codes.

History: New section recommended by code commissioner, 1921.

4744. Quarterly inspection of official bonds. At the regular quarterly meetings of all boards of county commissioners in this state, in March and September of each year, every board of county commissioners shall carefully examine all official bonds of all county and township officials of its

county, then in force and effect, and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency; and, if it appear to the satisfaction of any such board of county commissioners, or a majority of the members thereof, that any surety upon any such bond within and for its county has, since the approval and acceptance of such bond, died or withdrawn therefrom, or removed from the state, or disposed of all of his property in this state, or become insane, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, such board of county commissioners shall immediately cause the clerk of said board, for it, to notify in writing the judge of the district court of that district of its action and conclusion, and all facts in connection therewith and the reasons thereof; and said judge shall forthwith take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient, according to the requirements of law in the premises, and ample security for the amount thereof.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R. C. M. 1921.

4745. County officers must report fees. It is the duty of all county officers, justices of the peace, and constables to make a report in writing, under oath, to the board of county commissioners, on the first Mondays of March, June, September, and December, showing in detail all fees, emoluments, and compensation received, and moneys disbursed by them in their official capacity during the quarter preceding the making of each report.

History: Early act on this subject, pp. 232, 233, L. 1891; this section en. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907; re-en. Sec. 4745, R. C. M. 1921.

4746. Board of county commissioners must examine reports. It is the duty of the board to examine the reports, and if the report of an officer is found correct, the chairman of the board must write on the back of the same the words, "Approved and ordered filed," and sign his name thereto. If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board, and then, if found correct, filed as aforesaid.

History: En. Sec. 4337, Pol. C. 1895; re-en. Sec. 2982, Rev. C. 1907; re-en. Sec. 4746, R. C. M. 1921.

4747. Clerk must report to state auditor. It is the duty of the clerk of the board, within ten days after the adjournment of each regular session, to report in tabular form to the state auditor from the information contained in such reports, the amounts so received and for what purposes received, and moneys disbursed and for what purposes disbursed, which reports must be filed in the office of the state auditor.

History: En. Sec. 4338, Pol. C. 1895; re-en. Sec. 2983, Rev. C. 1907; re-en. Sec. 4747, R. C. M. 1921.

4748. Auditor must make report. The state auditor must publish such reports in tabular form in the state auditor's and state treasurer's reports. Such reports shall show, in tabular form, the amounts received and moneys disbursed by each officer in each county, and the sources from which said amounts were received.

History: En. Sec. 4339, Pol. C. 1895; re-en. Sec. 2984, Rev. C. 1907; re-en. Sec. 4748, R. C. M. 1921.

4749. Penalties. Every officer who fails to comply with or violates any of the provisions of this chapter is punishable as provided in section 10950 of the penal code.

History: En. Sec. 4340, Pol. C. 1895; re-en. Sec. 2985, Rev. C. 1907; re-en. Sec. 4749, R. C. M. 1921.

References
Atkinson v. Roosevelt County et al., 66 M 411, 419, 214 P 74.

CHAPTER 361

CONSOLIDATION OF COUNTY OFFICES

- Section 4749.1. Consolidation of county offices—petitions—time for filing—contents.
 4749.2. Examination of petition—hearing and notice.
 4749.3. Conduct of hearing.
 4749.4. Commissioners' right to consolidate offices without petition not limited.
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4749.1. Consolidation of county offices—petitions—time for filing—contents. At any time not later than seven (7) months before the date of any general election at which any of the county officers enumerated in section five of article XVI of the constitution of this state are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. Said petition shall be addressed to the board of county commissioners of such county, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the taxpayers of the county, and shall be signed by not less than twenty-five per centum (25%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post office address and voting precinct.

History: En. Sec. 1, Ch. 125, L. 1935.

4749.2. Examination of petition—hearing and notice. Upon the filing of any such petition the board of county commissioners shall cause the county clerk to forthwith examine the same and the registration records of the county and if, after such examination, such county clerk shall report to said board of county commissioners that such petition has been signed by at least twenty-five per centum (25%) of the qualified electors of the county whose names appear on such registration records, said board shall set a date for hearing such petition, which said date for hearing shall be not more than twenty days after the filing of such petition, and the county clerk shall cause notice of such hearing to be published one time in the official newspaper of the county, which publication must be at least ten days before the date set for said hearing, and if there be no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk, at least ten days before the date set for such hearing, in three public places in the county. Said notice shall contain a copy of said petition, with the signatures omitted, shall state the time and

place fixed for hearing the same, and that on such hearing any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

History: En. Sec. 2, Ch. 125, L. 1935.

4749.3. Conduct of hearing. At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any taxpayer of the county shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board of county commissioners shall make such order in relation to the consolidation of said offices as it shall deem proper.

History: En. Sec. 3, Ch. 125, L. 1935.

4749.4. Commissioners' right to consolidate offices without petition not limited. Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices named in the aforesaid article of the constitution, without the filing of the petition provided for in this act.

History: En. Sec. 4, Ch. 125, L. 1935.

4749.5. Board's order of consolidation to be published. Whenever a board of county commissioners shall make an order consolidating two or more of the offices enumerated in section 5 of article XVI of the constitution such board shall enter such order in full on its minutes of proceedings and shall cause such order to be published in a newspaper of general circulation printed and published in said county for a period of six successive weeks next following the date of the making and entry of such order.

History: En. Sec. 5, Ch. 125, L. 1935.

4749.6. Transfer of records on consolidation—duty of officers on consolidation. Whenever any such order is made consolidating two or more of such offices it shall be the duty of the officers holding and occupying such offices, at the end of their terms of office, to deliver and transfer to their successor, or successors, all of the books, files, papers, documents, maps, plats and records of such offices, and the officer or officers receiving the same shall make and deliver proper receipts therefor and shall thereafter be the custodian or custodians of such books, files, papers, documents, maps, plats and records and shall perform all of the duties and acts imposed on such consolidated offices as required of them by law and shall make and execute, with full legal force and effect, all certificates, official statements, official reports, affidavits and other instruments required to be made by the laws of this state by either or any of the officers whose offices have been so consolidated; provided, that if the laws of this state, or the rules, regulations, orders or directions of any officer or department of the state shall require each of two offices, which are consolidated, to keep duplicate or similar records, books, or accounts, after such consolidation such consolidated office shall keep but one set of such records, books or accounts.

History: En. Sec. 6, Ch. 125, L. 1935.

4749.7. Salary and bond of officer upon consolidation. When two or more offices are consolidated under a single officer such officer shall receive the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidation and shall give a bond in the same amount as would have been required of such officer.

History: En. Sec. 7, Ch. 125, L. 1935.

CHAPTER 362

COUNTY TREASURER

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4750. Duties of county treasurer. The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;
2. Keep an account of the receipt and expenditures of all such moneys in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;
3. So keep his books that the amount received and paid out on account of separate funds or specific appropriations is exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;
4. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county clerk;
5. Disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law;

6. Keep all school moneys in a separate fund, and keep a separate account of their disbursement to the several school districts which are entitled to receive them, according to the apportionment of the county superintendent of common schools;

7. Notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school moneys belonging to any other fund subject to apportionment;

8. Pay all warrants drawn on county or district school moneys, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly indorsed by the holders;

9. Make, annually, during the month of September of each year, a financial report for the last preceding year ending with August 31st, to the county superintendent in such form as may be required by him.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R. C. M. 1921. Cal. Pol. C. Sec. 4144.

General Provision Regarding Duties

The provisions of this section are mandatory. The use of the word "only" in the fifth subdivision limits the power of the treasurer to pay out the money of the county, both as to the amount and the precedent conditions of payment. In re Farrell, 36 M 254, 261, 92 P 785. See also County of Silver Bow v. Davies, 40 M 418, 426, 107 P 81.

The duty of a county treasurer to account for and pay over the moneys paid directly to him by members of the public, as revenue due the county, or directed by a court or by statute to be deposited with him for safe-keeping, is clearly statutory, and his liability for dereliction in this respect is a liability created by statute. Gallatin County v. United States F. & G. Co., 50 M 55, 62, 144 P 1085.

The county treasurer is a ministerial officer, without authority other than that conferred on him by statute, and he is not required to perform any duties not imposed on him by law. Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Payment of Juror's Certificates

The phrase, "or as otherwise provided

by law," in the fifth subdivision of this section, includes juror's certificates, and the restrictions as to the power of payment by the treasurer applies as well to them as to other claims against the county. In re Farrell, 36 M 254, 261, 92 P 785; County of Silver Bow v. Davies, 40 M 418, 426, 107 P 81.

Warrants

The owner of a warrant which the treasurer refuses to pay cannot obtain a money judgment against the county in an action on the warrant. Greeley v. Cascade County, 22 M 580, 588, 57 P 274.

Where the petition for writ of mandate to compel a county treasurer to register warrants shows on its face that the warrants were not properly made out, signed or executed, it does not state facts sufficient to justify the granting of the writ, since such a warrant is no warrant at all, and upon its presentation the officer may entirely disregard it. State ex rel. Lockwood v. Tyler, 64 M 124, 130, 208 P 1081.

References

Cited or applied as section 2986, revised codes, in Gallatin County v. United States F. & G. Co., 50 M 55, 62, 144 P 1085; State v. McGraw, 74 M 152, 157, 240 P 812.

4751. Receipt to be given by county treasurer. When any money is paid to the county treasurer, he must issue a receipt for such money in triplicate, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk and the triplicate shall be retained in his office.

History: En. Sec. 4351, Pol. C. 1895; re-en. Sec. 2987, Rev. C. 1907; re-en. Sec. 4751, R. C. M. 1921; amd. Sec. 1, Ch. 92, L. 1923. Cal. Pol. C. Sec. 4146.

4752. Mode of redeeming warrants. When a warrant is presented for payment, if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

History: En. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R. C. M. 1921. Cal. Pol. C. Sec. 4147.

4753. Registry of warrants—interest. When any warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant bears six per cent. per annum interest.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R. C. M. 1921. Cal. Pol. C. Sec. 4148.

Opinions of the Attorney General, volume 3, page 306.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

School District Warrants

School district warrants may be registered and bear interest as provided herein.

4754. Notice of redemption of warrants. When there are sufficient moneys to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the courthouse door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest.

History: En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990, Rev. C. 1907; re-en. Sec. 4754, R. C. M. 1921. Cal. Pol. C. Sec. 4149.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

4755. What it must state and how published. In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants presented for payment prior to such date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

History: En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R. C. M. 1921. Cal. Pol. C. Sec. 4150.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

4756. Priority in payment of warrants. Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer, and upon the receipts of moneys into the treasury not otherwise appropriated, he must set apart the same, or so much thereof as is necessary for the payment of such warrants.

History: Ap. p. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec.

2992, Rev. C. 1907; re-en. Sec. 4756, R. C. M. 1921. Cal. Pol. C. Sec. 4151.

References

State ex rel. Case v. Bolles et al., 74 M 54, 65, 238 P 586.

4757. Warrants must be registered in name of payee. The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or his agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing, and he must not pay any order or warrant except to the payee thereof, or to his agent, assignee, or legal rep-

representative, whose authority must be in writing and delivered to him, and must be returned with such order or warrant, when paid, to the board of county commissioners.

History: En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R. C. M. 1921.

4758. Funds reserved sixty days therefor. If such warrants be not re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of county commissioners may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

History: En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R. C. M. 1921. Cal. Pol. C. Sec. 4152.

Operation and Effect

While county warrants are not negotiable instruments in the sense of the law-merchant, and the transferee takes them subject to all legal and equitable defenses to them which existed in the hands of the payee, failure of the transferee to re-present a registered warrant within sixty days after it was called for payment (this section) does not render it invalid and may not be relied upon as a defense in an action to compel payment. *State ex rel. Case v. Bolles et al.*, 74 M 54, 64, 65, 238 P 586.

Id. Held, that the word "may" appearing in this section, which provides that the board of county commissioners may on application of the holder of a warrant who failed to re-present a warrant within sixty days after issuance of

the call for its payment, order the county treasurer to pay it, means must or shall.

Id. The only penalty a holder of a registered warrant incurs, under this section, for failure to re-present it for payment within sixty days after issuance of the call is loss of interest thereon.

Id. Where the board of county commissioners had wrongfully refused to issue an order for the payment of a warrant not re-presented for payment until after the sixty-day period provided for in this section, had expired, and thereafter the bank in which its funds were deposited became insolvent, the county was not discharged from liability thereon under section 8493, by the holder's neglect to make timely demand for payment, since the detriment suffered by it was traceable to its improper refusal and not to the holder's failure to act.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

4759. Notation on warrant of interest paid. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.

History: En. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R. C. M. 1921. Cal. Pol. C. Sec. 4153.

4760. Settlements, how made—monthly and annually. The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the county clerk, on the first Monday of each month. For the purpose of making such settlements he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor. He must make a full settlement of all accounts

with the county clerk, annually, on the first Monday of January, in the presence of the county commissioners, who have control thereof.

History: En. Sec. 4360, Pol. C. 1895; re-en. Sec. 2996, Rev. C. 1907; re-en. Sec. 4760, R. C. M. 1921. Cal. Pol. C. Sec. 4154.

4761. Report to board of commissioners each session. Each county treasurer must make a detailed report, at every regular meeting of the board of county commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

History: En. Sec. 4361, Pol. C. 1895; re-en. Sec. 2997, Rev. C. 1907; re-en. Sec. 4761, R. C. M. 1921. Cal. Pol. C. Sec. 4155. **References** State v. McGraw, 74 M 152, 156, 240 P 812.

4762. Penalty for not reporting. If any county treasurer neglects or refuses to settle or report, as required in the preceding section, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of county commissioners must institute suits for the recovery thereof.

History: En. Sec. 4362, Pol. C. 1895; re-en. Sec. 2998, Rev. C. 1907; re-en. Sec. 4762, R. C. M. 1921. Cal. Pol. C. Sec. 4156.

4763. When he must sue county attorney. If the county attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of section 4819, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent. thereon by way of damages.

History: En. Sec. 4363, Pol. C. 1895; re-en. Sec. 2999, Rev. C. 1907; re-en. Sec. 4763, R. C. M. 1921. Cal. Pol. C. Sec. 4157.

4764. When he must sue coroner. If the coroner, or any justice of the peace acting as coroner, fails to deliver to the treasurer, within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the public administrator or other legal representative of the decedent, as required by section 4850, the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

History: En. Sec. 4364, Pol. C. 1895; re-en. Sec. 3000, Rev. C. 1907; re-en. Sec. 4764, R. C. M. 1921. Cal. Pol. C. Sec. 4158.

4765. Disposition of property received from coroner. The treasurer, upon receiving from the coroner, or justice acting as coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must, within thirty days, sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

History: En. Sec. 4365, Pol. C. 1895; re-en. Sec. 3001, Rev. C. 1907; re-en. Sec. 4765, R. C. M. 1921. Cal. Pol. C. Sec. 4159.

4766. Money from coroner in treasury may be demanded within six years. If the money in the treasury is demanded within six years by the

legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of county commissioners.

History: En Sec. 4366, Pol. C. 1895; re-en. Sec. 3002, Rev. C. 1907; re-en. Sec. 4766, R. C. M. 1921. Cal. Pol. C. Sec. 4160.

4767. Deposit of public funds by county, city and town treasurers. It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand, together with the interest thereon. Provided, however, that said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation. Provided, further, that when negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter. When more than one bank is available in any county, for the deposit of county funds,

or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratable among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained. Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer. All interest paid and collected on such deposits shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after December 31, 1930, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage and approval

of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933. Cal. Pol. C. Sec. 4161.

Approval of Bonds

The bond required of county depositaries under this section, as amended by ch. 89, laws of 1923, must be approved by the board of county commissioners as an entity, its approval by the chairman of the board being insufficient. *State v. American Bank & Trust Co.*, 75 M 369, 372, 243 P 1093.

Id. In an action on a bond furnished a county under the depositary act which had been returned by the board of county commissioners as not needed and canceled but subsequently without the knowledge of the sureties thereon redelivered to the board, evidence reviewed and held sufficient to justify the conclusion of the court that the bond had not been approved by the board on a certain day as contended by the board.

Id. This section as amended by chapter 89, laws of 1923, providing that a county depositary bond shall not be effective until approved by the board of county commissioners, in the manner prescribed, is a special statute and controls even though there be a general statute on the subject inconsistent with it.

Id. Where a depositary bond had not been approved, its return amounted to a rejection, and after the sureties had been informed of the action of the board of county commissioners, it was not within the power of the board upon its resubmission by the bank without the knowledge of the sureties to thereafter approve it, a bond being a contract which requires the assent of both parties to the same thing at the same time.

While generally speaking, a depositary bond is not binding until it has been approved by the proper authority, a different rule applies where the bond was voluntarily entered into and the principal enjoyed the benefits which it was intended to secure and a breach occurred; in such case the sureties are estopped from availing themselves of such a defense, if they acted with knowledge of their rights, were aware of the facts and the county (depositor) was misled by their acts and changed its position in reliance thereon, was justified in so doing and was prejudiced or the sureties were benefited. *State v. Corvallis State Bank et al.*, 84 M 297, 300, 275 P 265.

Id. Under the last above rule, held, that where sureties on a bond of a bank which had been designated as a depositary of county funds under the depositary act (this section) were stockholders and directors of the bank and thus financially interested in the transaction, were sureties on a bond about to expire and, desirous that the bank be continued as a county depositary, executed a new bond found sufficient by the county authorities with the exception that they required one additional signature which was secured and the bond delivered to the treasurer, who accepted it and continued his deposits in the bank, the sureties were bound although the bond was not formally approved until five days after the failure of the bank.

Depositary Bonds

Where a county treasurer had county funds on deposit in a bank in the sum of thirty-three thousand dollars, without first having exacted an indemnity bond, and the bank later furnished bond in the sum of twenty-five thousand dollars, the legal effect of such latter action was a redeposit of a sum equal to one-half the amount of the bond, and neither its validity nor sufficiency was impaired by the wrongful act of the treasurer in keeping on deposit a sum in excess of the latter amount. *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 449, 128 P 596.

A depositary of public funds is not an officer and a depositary bond is not an official bond within the meaning of section 484, providing that if there are any defects in the approval or filing thereof, etc., the bond shall not be void so as to discharge the officer or his sureties. *State v. American Bank & Trust Co.*, 75 M 369, 372, 243 P 1093.

A bond given in pursuance to this section, to insure the safety and prompt payment of county funds deposited by the county treasurer (disregarding an unintelligible clause therein), held, a contract for the direct payment of money, warranting the issuance of a writ of attachment against the property of the sureties in an action to recover thereon. *State v. Pondera Valley State Bank et al.*, 77 M 1, 5, 248 P 207.

In the absence of a statute prohibiting it, a state bank may pledge its securities to indemnify a surety who signs a bond in its behalf in order that the bank may obtain deposits of public funds. *Ainsworth v. Kruger*, 80 M 468, 475, 260 P 1055.

Id. A bank director who became surety on a bond given by the bank to secure deposits of public funds was not, by virtue

of his office, disqualified from accepting notes and mortgages from the bank to indemnify him for possible loss because of his engagement as surety, where the bank was believed to be solvent at the time and the transaction was in entire good faith.

Id. Where the directors of a state bank on the second last day of 1922 in passing a resolution under which certain of its securities were pledged to one of their number to indemnify the latter for possible loss on a depository bond, had in contemplation the execution of a like bond for the subsequent year and the director in question in 1923 signed a new bond, and loss occurred to him under the latter bond, he was entitled to hold the securities delivered to him under the first bond to indemnify himself for such loss.

A depository bond executed to take the place of one about to expire and providing that the principal should faithfully account for all moneys "deposited with it," covered moneys on deposit on the date the bond was delivered to the treasurer as well as those subsequently deposited, the law looking to the purpose for which the instrument was required and given to determine the tense of the verb. *State v. Corvallis State Bank et al.*, 84 M 297, 300, 275 P 265.

Held, that a depository bond furnished to a county treasurer under this section and approved by the board of county commissioners providing for "conventional" subrogation, i.e., that in case of the bank's failure and before the county was paid in full, the surety should be entitled to share with the county in dividends paid by the receiver, was invalid as contrary to public policy, in that it had a tendency adversely to affect the public welfare and impair the public revenue. *American Surety Co. v. N. Y. v. Clarke*, 94 M 1, 9, 20 P 2d 831.

Liability of City Treasurer

This section requires the city treasurer to deposit public funds in banks designated by the council, he taking such securities as the council may prescribe, approve and deem fully sufficient to insure the safety of the funds, and when deposits are made as prescribed by the act the treasurer shall not be liable for losses except when due to his neglect or fraud. Defendant city treasurer had on deposit in a bank, designated by the council as a city depository, at the time of its closing some \$23,000 in excess of securities approved by the council; the council had not designated the amount of the securities which the treasurer should require from the bank nor taken any action as to the amount which should be deposited therein. Held, in an action by the city to recover on the official bond of the treasurer the amount lost by the failure of the bank,

that under the act above it was the duty of the council to see that securities fully sufficient to protect the deposits were furnished; that under the facts the treasurer could not be held guilty of neglect of duty in making deposits in excess of the securities approved by the council, and therefore was not liable on his official bond for the loss sustained. (*Mr. Justice Angstman dissenting.*) *Billings v. Massachusetts B. & I. Co.*, 88 M 91, 94, 290 P 246.

Liability of County for Other Funds

Held, that the contention that the legislature by the enactment of chapter 128, laws of 1923, authorizing school districts to issue warrants in a stated amount where the banks in which their funds had been deposited became insolvent—an emergency measure—modified or repealed this section, so as to relieve the county of its liability under that section for funds deposited with its treasurer by school districts and by him deposited in county depositories, has no merit. *State v. McGraw*, 74 M 152, 157 et seq., 240 P 812.

Id. Under chapter 137, laws of 1925, amendatory of this section, title to moneys deposited by a school district with the county treasurer passes to the county; the moneys become county funds; the county becomes the debtor of the school district and upon redeposit thereof in county depositories is liable to the district for their loss occasioned by such depositories becoming insolvent, such loss being the loss of county and not school district funds.

Held, under *State ex rel. School District v. McGraw*, ante, that a county is liable to an irrigation district for the loss of funds deposited by the latter with the treasurer of the former as required by this section, and redeposited by the treasurer in county depositories which failed. *State v. McGraw*, 74 M 164, 240 P 187.

Liability of County Treasurer

The fact that neither the county commissioners nor the state examiner, whose duty it was to ascertain the depositories of county funds and inquire into the sufficiency of the bonds held to secure them, interposed any objection to a county treasurer's wrongful conduct in depositing county funds in a bank without exacting any security, did not constitute an estoppel on the part of the county to claim that his act was wrongful. *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 451, 128 P 596.

Id. A county, not having authority to empower its treasurer to make a general deposit of its funds without requiring security as provided by statute, cannot ratify the treasurer's wrongful act in doing so, and therefore is not estopped to assert

that such act was wrongful because of its presumed ratification thereof.

By the adoption of chapter 88, laws of 1913 (this section) and amendment thereof (chapter 137, laws of 1925), requiring the county treasurer to deposit all "public moneys"—which term includes moneys belonging to a school district or other branch of the state government—in his possession in county depositories designated by the board of county commissioners, the treasurer becomes the agent of the county in handling such funds and he and his bondsmen are relieved from liability for their loss occasioned through the failure of the depositories. *State v. McGraw*, 74 M 152, 157 et seq., 240 P 812.

Under this section, as amended by chapter 89, laws of 1923, a county treasurer may not lawfully deposit public funds, nor permit them to remain, in a bank unless such bank has been designated by the board of county commissioners, after approval by it of an indemnity bond or other prescribed security, as a proper depository; disregard of such requirement is a violation of official duty and, in case of loss, subjects the treasurer to liability upon his official bond. *State v. Rosman et al.*, 84 M 207, 213, 274 P 850.

Since the enactment of chapter 89, laws of 1923, where the county treasurer deposits county funds in a bank designated by the board of county commissioners as a county depository, first requiring proper security, he is no longer custodian of such funds, and liable in case of loss only if occasioned by his own neglect, fraud or dishonorable conduct. *Rosebud County v. Smith et al.*, 92 M 75, 81, 9 P 2d 1071.

The provisions of this section, relating to depository bonds which the county treasurer must furnish and the board of county commissioners approve to insure the safety and prompt payment of deposits made, became as much a part of a surety bond at the time it was executed and delivered as if written into the contract. *American Surety Co. of N. Y. v. Clarke*, 94 M 1, 9, 20 P 2d 831.

Personal Bond

Where a personal bond is given to secure county deposits "in addition to" other bonds furnished by surety companies, the liability of the sureties on the former is not postponed until the corporation bonds have been exhausted. *State v. Pondera Valley State Bank et al.*, 77 M 1, 5, 248 P 207.

Preferred Claims Against Insolvent Banks

Where a county treasurer has county funds on deposit in a bank, in compliance with this section, the moneys so deposited constitute a general deposit and make of the county a general creditor of the bank.

In case of the bank's failure, it must, under these circumstances, either share alike with other general creditors in the distribution of the bank's assets, or look to the surety for relief. *Yellowstone Co. v. First Trust & Savings Bank*, 46 M 439, 449, 128 P 596.

Id. That a county treasurer was following a custom established by his predecessor in depositing public moneys in bank, without requiring the security prescribed by statute, was no defense to a suit by the county to have the bank declared a trustee *ex maleficio* of such moneys for its benefit, and to be decreed entitled to preference in the distribution of the assets of the bank then in the hands of a receiver.

Id. The keeping of county funds on deposit to the extent of \$20,500, excess over and above the sum of \$12,500 secured by bond, as required by this section, was unlawful and without the county's consent, and as to such excess, the bank, chargeable with knowledge of the unlawful conduct of the county treasurer, and therefore an active participant in the wrong, became a trustee *ex maleficio*, for the use and benefit of the county.

In an action upon sureties to establish a preference upon the assets of an insolvent bank to satisfy the amount which they were required to pay a county for funds on deposit therein at the time of its suspension, held that in the absence of constitutional or statutory provision conferring the right of sovereignty upon counties they do not possess it; that therefore the county could not assert the right of preference with respect to county funds lawfully on deposit in the bank which the state enjoys in its sovereign capacity, and hence that the sureties were not entitled to claim that they were subrogated to such right of preference. *Bignell et al. v. Cummins*, 69 M 294, 304, 222 P 797.

See City of Missoula v. Dick et al., as to preference right of a citizen, 76 M 506, 248 P 193.

Before it may be said that a bank which accepts deposits of public funds made illegally by their custodian and thereafter becomes insolvent is a trustee *ex maleficio* of such funds for the public body to which they belong, it must be made to appear that the bank had notice or knowledge of the illegality of the deposits. *State ex rel. Rankin v. Benton State Bank*, 81 M 322, 325, 263 P 689.

Id. Where a bank under the depository law had qualified to receive county funds to the amount of \$325,000 but had received deposits only to the amount of \$251,538 without knowledge or notice that the county treasurer in depositing that amount with it had done so in disregard of this section, which required him to prorate the funds among all the banks in the

county which had qualified as depositories, the county, upon subsequent insolvency of the bank, was not entitled to an order declaring it a preferred creditor to the amount of the excess between the sum which the treasurer should have deposited under a proper prorating and the sum actually deposited, on the theory that it was a trustee *ex maleficio* of the excess deposits; not having been an active participant in the wrongdoing of the treasurer and having received the deposits without knowledge or notice that he was transgressing the law, its status as a general depository was not changed to that of a trustee.

Held, under this section, as amended by chapter 89, laws of 1923, making it the duty of the county treasurer to deposit public funds only in such banks as may be designated by the board of county commissioners, upon receipt by him of such securities from them as may be prescribed and approved by the board as sufficient to safeguard the deposits, the treasurer is absolved from responsibility in the selection of the depository; the deposits when commingled with other moneys of the bank become general deposits and in case of the bank's subsequent insolvency and the insufficiency of the securities to save the county harmless, the county may not claim a preference payment out of its assets to the extent of the deficit, but may take only as a general creditor. *County of Missoula et al. v. Lochrie*, 83 M 308, 312, 271 P 710.

County depository bank, receiving deposits exceeding amount of its bond contrary to county commissioners' direction, violated law (this section). County treasurer's deposit in depository bank held traceable into cash in receiver's hands; presumption being that money disbursed therefrom was other money. *First Nat. Bank of Forsyth, Mont. v. Fidelity & Deposit Co.*, 48 F 2d 585.

Prorating Between Depositories

The county treasurer who collects taxes for a city and which constitute city and not county funds, is without authority to prorate such funds among banks designated by the board of county commission-

ers as depositories for county moneys. *State v. McNamer*, 62 M 490, 495 et seq., 205 P 951.

Where a board of county commissioners, acting under chapter 88, laws of 1913 (this section before amendment), had designated a bank a county depository, the county treasurer was, in the absence of the statute requiring a periodical designation thereafter, justified in continuing to make deposits therein upon receipt of approved securities, until notified to the contrary. *State ex rel. Rankin v. Madison State Bk.*, 77 M 498, 501, 251 P 548.

Id. Held, that this section before amendment, not having prescribed that the board of county commissioners in designating a bank as county depository should cause its action to be recorded in its minutes, the board, under the rule that where the mode of the exercise of a power granted to it is not prescribed it may use its own discretion in selecting the mode, could properly choose any method of making known to the treasurer the bank entitled to receive county deposits it deemed adapted for that purpose.

Id. Under the above rules, held that where a board of county commissioners made an order pursuant to the provisions of this section, designating a certain bank a county depository, but failed to cause such order to be entered in its minutes, the board was properly permitted, on a taxpayer's petition to require the receiver of the bank upon its insolvency to recognize the claim of the county as a preferred one on the ground that the deposits therein had been unlawfully made in that the board's order designating the bank a depository had not been entered in its minutes, to prove its action in that regard by oral testimony; that the funds were legally deposited and that therefore the county was a general creditor and not entitled to a preference.

References

State ex rel. Case v. Bolles et al., 74 M 54, 238 P 586; *Ainsworth v. Kruger*, 80 M 468, 475, 260 P 1038; *City of Missoula v. Dick et al.*, 76 M 502, 507, 248 P 193; *City of Parsons v. Fidelity & Deposit Co.*, 29 F 2d 417, 422.

4767.1. Cashier's checks of federal reserve banks as security for deposit of public funds. From and after the passage and approval of this act, it shall be lawful for county, city or town officials charged by law with the duty of requiring security from depositories of their several public funds, to accept from such depository bank as security for such deposits, or any part thereof, cashier's checks issued to such depository bank by any federal reserve bank.

History: En. Sec. 1, Ch. 106, L. 1935.

4767.2. Supplementary nature of act. This act shall be deemed to be supplementary to the provisions of section 4767, and shall not in any man-

ner limit or affect the right of the several officers enumerated in said section to accept security of the character specified therein.

History: En. Sec. 2, Ch. 106, L. 1935.

4767.3. State examiner to sign trustee and deposit receipts. The state examiner of the state of Montana is hereby designated and empowered to sign all trustee and deposit receipts and releases required to be signed for and on behalf of the state of Montana in all cases where negotiable securities are placed in trust with a trustee or trustees in lieu of the actual securities, for security of county, city, and town deposits, under the laws of the state of Montana relating to the deposit of county, city, and town funds.

History: En. Sec. 1, Ch. 44, L. 1931.

4768. County commissioners may suspend treasurer. Whenever any action based upon official misconduct is commenced against any county treasurer, the board of county commissioners may, in its discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

History: En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907; re-en. Sec. 4768, R. C. M. 1921. Cal. Pol. C. Sec. 4162.

4769. No commissions allowed. In case of the death of any county treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representative of such predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R. C. M. 1921. Cal. Pol. C. Sec. 4163.

4770. Books and vouchers subject to inspection. The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and grand jury.

History: En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907; re-en. Sec. 4770, R. C. M. 1921. Cal. Pol. C. Sec. 4164.

4771. Must permit state examiner and county clerk to examine books. The treasurer must permit the state examiner and county clerk or the board of county commissioners to examine his books and count the money in the treasury, whenever any of them may wish to make an examination or counting.

It shall be the duty of the county clerk and recorder at the close of business each month to count the cash in the office of the county treasurer and to certify the same in detail to the state examiner, retaining a copy of such certification in his office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1935. Cal. Pol. C. Sec. 4165.

4772. His duty as collector of taxes. His duties as collector of taxes are prescribed in sections 1996 to 2443 of this code.

History: En. Sec. 4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907; re-en. Sec. 4772, R. C. M. 1921.

CHAPTER 363

SHERIFF

- Section 4773. "Process" and "notice" defined.
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4773. "Process" and "notice" defined. "Process," as used in this article, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer, or when required by law to be served independently of such proceeding.

History: En. Sec. 4380, Pol. C. 1895;	References
re-en. Sec. 3009, Rev. C. 1907; re-en. Sec.	State ex rel. Brooks v. Cook, 84 M 478,
4773, E. C. M. 1921. Cal. Pol. C. Sec. 4175.	487, 276 P 958.

4774. Duties of sheriff. The sheriff must:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit, or have committed a public offense;
3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;
4. Perform duties of humane officer within his county with reference to the protection of dumb animals;
5. Attend all courts, except justices and police courts, at their respective terms or sessions held within his county, and obey their lawful orders and directions.
6. Command the aid of as many male inhabitants as his county as he may think necessary in the execution of these duties;
7. Take charge of and keep the county jail and the prisoners therein;
8. Indorse upon all notices and process the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time or reception;
9. Serve all process or notices in the manner prescribed by law;

10. Certify under his hand upon the process of notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

History: En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1925. Cal. Pol. C. Sec. 4176.

Operation and Effect

Where a sheriff had employed a number of men, sworn in as deputy sheriffs, to guard railroad strikers, after having assured the company that he was able to enforce the peace without such aid, and the company had agreed to pay for such services, the company was liable for such payment, notwithstanding the statutory provision empowering the sheriff to call to his aid such persons as may be necessary to suppress unlawful assemblies, and the provision prohibiting a sheriff from demanding for official services any greater fees than are allowed by law. *Sullivan v. U. & N. Ry. Co.*, 11 M 236, 243, 28 P 807.

Whether it was necessary for the sheriff to assemble his deputies, the policemen, and the employees of the defendant as a posse comitatus we need not inquire. Presumably the sheriff was acting within his authority; and he was the one to judge whether he needed help to preserve the peace. It was his duty to prevent and

suppress breaches of the peace, riots and insurrections, and to command the aid of as many male inhabitants of his county as he thought necessary to execute that duty. Upon such an occasion the sheriff is the commander of all he summons to his aid and all under his command are in duty bound to obey his lawful orders. *McCarthy v. Anaconda Copper Min. Co.*, 70 M 309, 313, 225 P 391.

A sheriff without authority, as such, beyond the confines of the state; the ordinary discharge of his duties does not authorize him to leave the state except where he is designated the agent of the state in cases of extradition. *Brannin v. Sweet Grass Co.*, 88 M 412, 416, 293 P 970.

References

Cited and applied as section 4381, political code, in *Sears v. Gallatin County*, 20 M 462, 464, 52 P 204; as section 3010, revised codes, in *State ex rel. Hillis v. Sullivan*, 48 M 320, 324, 137 P 392; *State v. Driscoll*, 49 M 558, 565, 144 P 153; *Majors v. County of Lewis and Clark*, 60 M 608, 615, 201 P 268; *State ex rel. Beazley v. District Court*, 75 M 116, 120, 241 P 1075; *Plummer v. Northern Pac. Ry. Co.*, 79 M 82, 89, 255 P 18.

4775. Under-sheriff to be appointed. The sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person under-sheriff to hold during the pleasure of the sheriff. Such under-sheriff has the same powers and duties as a deputy sheriff.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907; re-en. Sec. 4775, R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 1933.

References

Cited or applied as section 4382, political code, in *Jobb v. County of Meagher*, 20 M 424, 429, 51 P 1034.

4776. Duties of under-sheriff. Whenever a vacancy occurs in the office of sheriff, the under-sheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified. Any default, misfeasance, or malfeasance of such under-sheriff in the meantime, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the conditions of the bond given by him to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R. C. M. 1921.

4777. Action may be prosecuted against executors. Any action for default or misconduct of any sheriff, his under-sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907; re-en. Sec. 4777, R. C. M. 1921.

4778. Return by mail to another county. When process or notices are returnable to another county, the sheriff may inclose such process or notice in an envelope, addressed to the officer who sent them, and deposit it in the postoffice, prepaying postage.

History: En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R. C. M. 1921. Cal. Pol. C. Sec. 4177.

4779. Return prima facie evidence. The return of the sheriff, upon process or notices, is prima facie evidence of the facts in such return stated.

History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R. C. M. 1921. Cal. Pol. C. Sec. 4178.

Operation and Effect

The return of an officer upon a search-warrant is prima facie evidence only of the facts stated therein and may, therefore, be overcome by other evidence. *State ex rel. Merrell v. District Court*, 72 M 77, 231 P 1107.

The return of a sheriff on execution sale is only prima facie evidence of the facts stated therein; it may be contradicted by other evidence, especially where the return is at variance with the officer's certificate of sale, by virtue of which latter instrument title to the property passes, subject to redemption; nor can the

title of a purchaser at an execution sale be affected by defects or informalities in the return. *Commercial Bank & Trust Co. v. Jordan*, 85 M 375, 386, 278 P 832.

A sheriff's return on execution is merely prima facie evidence of the facts therein stated—it may be overcome by other evidence; hence, where his return in an action for the rescission of a land contract recited that he had delivered certain articles of personal property as directed, evidence regarding loss of or damage thereto was properly admissible. *Silfvast v. Asplund et al.*, 99 M 152, 158, 42 P 2d 452.

References

Rothrock v. Bauman et al., 73 M 401, 406, 236 P 1077.

4780. Penalty for non-return of process. If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

History: En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907; re-en. Sec. 4780, R. C. M. 1921. Cal. Pol. C. Sec. 4179.

4781. Liability for refusing to levy or sell. If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

History: En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907; re-en. Sec. 4781, R. C. M. 1921. Cal. Pol. C. Sec. 4180.

Operation and Effect

Where a sheriff wrongfully refuses to levy upon and sell property on execution issued on a money judgment, he is liable in damages to the judgment creditor on his official bond, and therefore the latter has a plain, speedy and adequate remedy and is not entitled to a writ of mandate to compel the officer to proceed under the execution. *State ex rel. Duggan v. District Court*, 65 M 197, 200, 210 P 1062.

Id. Where a judgment creditor is entitled to the possession of specific property and the sheriff refuses to proceed under execution, the remedy of an action for damages on the officer's bond is not

adequate, and mandamus lies to compel action.

Complaint in an action against a sheriff and his official bondsman for damages flowing from the refusal of the officer to levy a writ of attachment, alleging that the judgment in the attachment suit and all of the rights of the judgment creditor against the defendants had been assigned to plaintiff and that plaintiff is the assignee of all of the rights of the said judgment creditor against them, held sufficient to show an assignment of the cause of action in the absence of a special demurrer or motion to make more definite and certain. *Gotzian & Co. v. Morris et al.*, 89 M 307, 311, 297 P 489.

References

State ex rel. Grantier v. Woods, 67 M 337, 339, 215 P 671.

4782. Damages for refusing to pay over money. If he neglects or refuses to pay over, on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907; re-en. Sec. 4782, R. C. M. 1921. Cal. Pol. C. Sec. 4181.

Operation and Effect

Since under this section a means is provided for compelling a sheriff to pay moneys which may have come into his hands by virtue of his office, to the person entitled thereto, mandamus does not lie to compel him to do so. State ex rel. Grantier v. Woods, 67 M 337, 339, 215 P 671.

An officer who comes into possession of funds by virtue of his office and deposits the same, exercising good faith and due care in the selection of the depository, is not liable on his official bond for their loss resulting from the failure of the bank.

Wells-Dickey Co. v. Benjamin, 74 M 170, 175, 239 P 771.

Id. Held that this section providing that if a sheriff refuses to pay over money which came into his hands by virtue of his office, the person entitled thereto may recover it with twenty-five per cent damages, has application only to cases of intentional delinquency, merely prescribes punishment for wilful or corrupt neglect of duty, and is therefore inapplicable to a case where his failure to pay was due to the closing of a bank in which the money was deposited.

References

Cited or applied as section 4389, political code, in Oppenheimer v. Regan, 32 M 110, 79 P 695.

4783. Liability for permitting an escape. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;
2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;
3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;
4. Upon being sued for damages for an escape or rescue, he may introduce evidence in mitigation or exculpation.

History: En. Sec. 4390, Pol. C. 1895; re-en. Sec. 3019, Rev. C. 1907; re-en. Sec. 4783, R. C. M. 1921. Cal. Pol. C. Sec. 4182.

4784. Liability for a rescue. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

History: En. Sec. 4391, Pol. C. 1895; re-en. Sec. 3020, Rev. C. 1907; re-en. Sec. 4784, R. C. M. 1921. Cal. Pol. C. Sec. 4183.

4785. No action for escape or rescue after return or recapture. An action cannot be maintained against a sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff.

History: En. Sec. 4392, Pol. C. 1895; re-en. Sec. 3021, Rev. C. 1907; re-en. Sec. 4785, R. C. M. 1921. Cal. Pol. C. Sec. 4184.

4786. Direction to sheriff must be in writing. No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing signed by the attorney of the party or by the party.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R. C. M. 1921. Cal. Pol. C. Sec. 4185.

4787. When office of sheriff deemed vacant. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907; re-en. Sec. 4787, R. C. M. 1921. Cal. Pol. C. Sec. 4186.

4788. When sheriff justified in executing process. A sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R. C. M. 1921. Cal. Pol. C. Sec. 4187.

Operation and Effect

In an action against a sheriff for the value of personal property sold under execution issued against the property of a third person, the officer cannot justify under the execution, without proving the

existence of a valid judgment. *Ford v. McMaster*, 6 M 240, 241, 11 P 669; *Marcum v. Coleman*, 8 M 196, 200, 19 P 394; *Palmer v. McMaster*, 10 M 390, 394, 25 P 1056.

References

Folsom v. Fisco et al., 62 M 194, 197, 204 P 367.

4789. Officer to exhibit process. The officer executing such process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R. C. M. 1921. Cal. Pol. C. Sec. 4188.

4790. Sheriff to act as crier. The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

History: En. Sec. 4397, Pol. C. 1895; re-en. Sec. 3026, Rev. C. 1907; re-en. Sec. 4790, R. C. M. 1921. Cal. Pol. C. Sec. 4189.

References

Cited and construed as section 3026, revised codes, with other sections, in *State ex rel. Hillis v. Sullivan*, 48 M 320, 324, 137 P 392.

4791. Service on sheriff, how made. Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907; re-en. Sec. 4791, R. C. M. 1921. Cal. Pol. C. Sec. 4190.

4792. Coroner to execute process when sheriff is a party. When the sheriff is a party to an action or proceeding, the process and orders therein,

which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

History: En. Sec. 4399, Pol. C. 1895; re-en. Sec. 3028, Rev. C. 1907; re-en. Sec. 4792, R. C. M. 1921. Cal. Pol. C. Sec. 4191.

4793. Elisors to act in cases designated. Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

1. When the sheriff and coroner are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other; or, when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause would not act promptly or impartially. When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor.

History: En. Sec. 4400, Pol. C. 1895; re-en. Sec. 3029, Rev. C. 1907; re-en. Sec. 4793, R. C. M. 1921. Cal. Pol. C. Sec. 4192.

4794. Other duties of sheriff. The sheriff must perform such other duties as are required of him by law.

History: En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907; re-en. Sec. 4794, R. C. M. 1921. Cal. Pol. C. Sec. 4193. **References** Brannin v. Sweet Grass Co., 88 M 412, 416, 293 P 970.

CHAPTER 364

COUNTY CLERK

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| | 4813.4. Destruction of records, when allowed. |
| | 4814. Annual report of county clerk. |
| | 4814.1. Salary may be withheld until annual statement made. |

4795. County clerk as ex-officio recorder to procure record books. The county clerk, as ex-officio recorder, must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners. He has the custody and must keep all the books, records, maps, and papers deposited in his office.

History: En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R. C. M. 1921. Cal. Pol. C. Sec. 4324.

4796. What to be recorded. He must, upon payment of his fees for the same, record, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;

2. Certificates of births and deaths;

3. Wills devising real estate admitted to probate;

4. Official bonds;

5. Transcripts of judgments which by law are made liens upon real estate;

6. Instruments describing or relating to the separate property of married women, and sole trader judgments;

7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded;

8. Notice of pre-emption claims;

9. Notice and declaration of water rights;

10. Assignments for the benefit of creditors;

11. Affidavits of annual work done on mining claims;

12. Notices of mining locations and declaratory statement;

13. Estrays and lost property;

14. A book containing appraisement of state lands;

15. Such other writings as are required or permitted by law to be recorded; provided, nothing herein shall be construed as preventing the recording or copying of such instruments, separately, upon a single or loose page or pages of a book, if such page or pages shall immediately become a part of such book or volume, which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

History: En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R. C. M. 1921. Cal. Pol. C. Sec. 4235.

Operation and Effect

Since an option to purchase land is not itself a contract to purchase the land, the book kept by the county clerk and

recorder for the recording of contracts for the purchase or sale of real property is not, but the miscellaneous record book required by this section, subd. 15, for entry of such other writings as are required or permitted by law to be recorded, is the proper book for recordation of such a contract. *Guerin v. Sunburst Oil & Gas Co.*, 68 M 365, 369, 218 P 949.

4797. Recordation of certain instruments declared proper. All instruments which have heretofore been filed for record in the several recorders' offices of the state of Montana, including all instruments which were

offered for record pursuant to the previous section, which have been recorded in the offices of the recorders of the several counties by being correctly copied, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by the use of prepared blank forms, or by being so inscribed or printed on a single loose leaf or leaves of a book, which leaf or leaves have heretofore or are to become a permanent part of any such book or volume, which, when completed, has or shall have the pages thereof securely locked, sealed, or bound into the volume, shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

History: En. Sec. 1, Ch. 138, L. 1917; re-en. Sec. 4797, R. C. M. 1921.

4798. Same—validation of such instruments. And all such instruments as have been recorded in accordance with the requirements of the foregoing section are hereby expressly validated, in so far as validation may be necessary to establish them as correctly or legally recorded instruments for all purposes.

History: En. Sec. 2, Ch. 138, L. 1917; re-en. Sec. 4798, R. C. M. 1921.

4799. Indexes to be kept. Every county clerk, as ex-officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

3. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of Mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";

4. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of Mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—Mortgagees," "Releases of mortgages of personal property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release," "Where recorded," or "Where filed," "Date of mortgages released," "Where mortgages released are recorded," or if personal property, "When filed";

6. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns, headed respectively: "Names of

parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," "To whom powers are executed";

7. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded";

8. An index of leases, labeled "Lessees," each page divided into four columns respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded";

9. An index of marriage certificates, labeled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

10. An index of marriage certificates, labeled "Marriage certificates—Women," each page divided into six columns, headed respectively: "Women married," (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

11. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignment," "When and where recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments," "Date of assignments," "When and where recorded";

13. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded";

14. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded";

15. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices, when filed";

16. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied";

17. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When filed," "When attachments discharged";

18. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively: "Parties to actions," "Notices, when recorded," "When filed";

19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled "Certificates of sale," each page divided into four columns, headed respectively: "Plaintiff," "Defendant," "Purchaser at sale," "Date of sale";

20. An index of the separate property of married women and sole trader judgments labeled "Separate property of married women and sole traders," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded";

21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated, and the year when the work was done, labeled "Annual work on mining claims";

22. An index of mining claims and declaratory statements, labeled "Notices of location of mining claims and declaratory statements," each page divided into four columns, headed respectively: "Locators," "Name of claim," "Notice, when filed," "Where recorded";

23. An index to the register of births and deaths;

24. An index to notices and declarations of water rights;

25. An index to the "Estray and lost property book";

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed;

27. A miscellaneous index, in which must be indexed papers not heretofore stated.

History: En. Sec. 4412, Pol. C. 1895;	References
re-en. Sec. 3033, Rev. C. 1907; re-en. Sec.	Guerin v. Sunburst Oil & Gas Co., 68 M
4799, R. C. M. 1921. Cal. Pol. C. Sec. 4236.	365, 369, 218 P 949.

4800. Index to maps and plats. He must keep an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted, and a general description of the same.

History: En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907; re-en. Sec. 4800, R. C. M. 1921.

4801. To record decrees of partition or affecting title to real property. He must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county.

History: En. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907; re-en. Sec. 4801, R. C. M. 1921. Cal. Pol. C. Sec. 4238.

4802. Filing of copy to impart notice. Every such certified copy of a judgment of partition or any other judgment, from the time of filing the same for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895; re-en. Sec. 3036, Rev. C. 1907; re-en. Sec. 4802, R. C. M. 1921. Cal. Pol. C. Sec. 4239.

4803. Must keep a map book. He must keep a well-bound book, which must contain maps of towns, villages, or additions to the same within his county, together with the description, acknowledgment, or other writing thereon.

History: En. Sec. 4416, Pol. C. 1895; re-en. Sec. 3037, Rev. C. 1907; re-en. Sec. 4803, R. C. M. 1921.

4804. May keep two or more indexes in the same volume—arrangement of indexes. He may keep in the same volume any two or more of the indexes mentioned in section 4799 of this code, but the several indexes must be kept distinct from each other, and the volumes distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column of the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index; and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895; re-en. Sec. 3038, Rev. C. 1907; re-en. Sec. 4804, R. C. M. 1921. Cal. Pol. C. Sec. 4240.

Operation and Effect

No rights under a recorded instrument

will be impaired or affected by the failure of a county clerk and recorder to index or enter the same, as required by statute. *Palmer v. Murray*, 8 M 174, 183, 19 P 553.

4805. Duty on receipt of instrument to be recorded. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the office of the county clerk, as ex-officio recorder, for record, accompanied by the required fee, he must indorse upon the same the time it was received, noting the year, month, day, hour and minute of its reception, and must record the same without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception. The county clerk shall not receive for recording, any deed, mortgage or assignment of mortgage unless the postoffice address of the grantee, mortgagee or assignee of the mortgagee, as the case may be, is contained therein, provided that this requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R. C. M. 1921; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931. Cal. Pol. C. Sec. 4241.

4806. Recorded instrument to be indorsed. He must also indorse upon each instrument, paper, or notice, the time when and the book and pages in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order.

History: En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907; re-en. Sec. 4806, R. C. M. 1921. Cal. Pol. C. Sec. 4242.

4807. To make searches. He may, upon the application of any person, and upon the payment or tender of the fees therefor, make searches

for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

History: En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907; re-en. Sec. 4807, R. C. M. 1921. Cal. Pol. C. Sec. 4243.

4808. Liable for neglect of certain duties. If any county clerk, as ex-officio recorder, to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be by law recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within reasonable time after receiving the same; or

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or

3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or

4. Neglects or refuses to make the searches and to give the certificates required by this chapter; or if such searches or certificates are incomplete or defective, when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested; or

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein, he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby, and is punishable as provided in the penal code.

History: En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907; re-en. Sec. 4808, R. C. M. 1921. Cal. Pol. C. Sec. 4244.

4809. Fees to be prepaid. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fee for the same, as prescribed by law, is, if demanded, paid or tendered.

History: En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907; re-en. Sec. 4809, R. C. M. 1921. Cal. Pol. C. Sec. 4245.

Operation and Effect

Where a paper entitled to be filed is deposited with the proper custodian, and, if prepayment of the filing fee is required, the fee tendered, it is filed, the marking thereof as "filed" not constituting the filing. In re Dewar's Estate, 10 M 426, 437, 25 P 1025.

Under this section the county clerk may, but is not required to, demand prepayment

of filing or other fees; section 4892 having to do with the payment of fees in advance, being inapplicable. Minneapolis Steel & Machinery Co. v. Thomas, 54 M 132, 135, 163 P 40.

Id. Where a corporation sent its annual report to the county clerk with the request that he advise it as to his fee for filing his answer, accompanying his refusal to file it because not acknowledged, "will state that the fee for filing is one dollar," was not such a demand for prepayment as is contemplated by this section.

4810. Records open to inspection. All books or records, maps, charts, surveys, and other papers on file in his office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and he must arrange the books of record

and indexes in his office in such suitable places as to facilitate their inspection.

History: En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907; re-en. Sec. 4810, R. C. M. 1921. Cal. Pol. C. Sec. 4246.

4811. Duties of county clerk. The county clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;
2. Act as clerk of the board of county commissioners;
3. Draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed, and ordered paid by the board of county commissioners; also for all debts and demands against the county, when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal; which warrants shall be signed by the county clerk and the chairman of the board of county commissioners, excepting warrants drawn on the redemption fund;
4. He must keep accounts current with the treasurer, and when any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to such person, which duplicate receipt shall be filed in the office of the county clerk, and such county clerk shall charge the treasurer with the amount thereof.

5. Make the annual statement as prescribed in section 4814 of this code.

History: En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1923. Cal. Pol. C. Sec. 4204.

References

Cited or applied as section 3045, revised

codes, in State ex rel. Dolin v. Major, 58 M 140, 147, 192 P 618; State v. District Court et al., 62 M 600, 601, 205 P 955; State ex rel. Lockwood v. Tyler, 64 M 124, 131, 208 P 1081; Kalman v. Treasure County et al., 84 M 285, 288, 275 P 743.

4812. Warrants to be numbered. All warrants issued by the county clerk during each year, commencing with first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

History: En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R. C. M. 1921. Cal. Pol. C. Sec. 4219.

4813. Other duties. The county clerk must keep such other records and books, and perform such other duties as are prescribed by law.

History: En. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907; re-en. Sec. 4813, R. C. M. 1921. Cal. Pol. C. Sec. 4205.

4813.1. Duty of county clerk. The county clerk of any county is also clerk of the county commissioners and ex-officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or as recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners, or as recorder.

History: En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907; re-en. Sec. 4813a, R. C. M. 1921.

4813.2. Destruction of chattel mortgages, conditional sales contracts and satisfactions after ten years authorized. Any chattel mortgage or contract of conditional sale on file in the office of the county clerk and recorder of any county within the state of Montana, which has been previously satisfied either by written satisfaction or marginal satisfaction, may, at any time after ten (10) years from the date of such satisfaction, be destroyed by the county clerk and recorder in the presence of the county commissioners, and any written satisfaction thereof filed may be likewise destroyed at said time.

History: En. Sec. 1, Ch. 46, L. 1931.

4813.3. Chattel mortgages, conditional sales contracts, seed and threshers' liens to be retained eight years from and after extinction of lien. All chattel mortgages, conditional sales contracts, seed liens and threshers' liens, which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state and the office of the registrar of motor vehicles shall be retained by such county clerk or registrar of motor vehicles in a file kept by him for such purposes, for a period of eight years from and after the time when said mortgage, conditional sales contract, seed lien, or threshers' lien has ceased to be a lien on the property described therein, either by virtue of the original mortgage or any renewal thereof.

History: En. Sec. 1, Ch. 113, L. 1935.

4813.4. Destruction of records, when allowed. Upon the expiration of the period of time specified in section 4813.3, the county clerk and recorder or registrar of motor vehicles may destroy all chattel mortgages, conditional sales contracts, seed liens and threshers' liens, which have been preserved for the period of time specified in this act.

History: En. Sec. 2, Ch. 113, L. 1935.

4814. Annual report of county clerk. Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the state examiner, a full true and complete statement of the financial condition of the county. Such statement shall be made out on the form designated by the state examiner and must show:

- (1) A detailed description of all of the resources and liabilities of the county and the book value thereof;
- (2) The amount of moneys received, showing the source of such revenue;
- (3) The amount of moneys disbursed, with the purpose of disbursement;
- (4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits and the balance at the end of the year.
- (5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years and such other items as the state examiner may prescribe.

History: Ap. p. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R. C. M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927.

4814.1. Salary may be withheld until annual statement made. The state examiner is hereby authorized to cause the salary warrant of the county clerk of any county to be withheld from said officer until he has complied with the provisions of this act.

History: En. Sec. 2, Ch. 106, L. 1927.

CHAPTER 365

CLERK OF THE DISTRICT COURT

Section 4815.	Duties and records to be kept.
4816.	Other duties.
4817.	Indexes to court records.
4818.	Duties concerning same.
4818.1.	Index of bonds in criminal cases to be kept.

4815. Duties and records to be kept. The clerk of the district court, in addition to the duties prescribed by the code of civil procedure and the penal code, must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;

2. Act as clerk of the district court, and attend each term or session thereof, and upon the judges at chambers when required;

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a register of action, as provided in the code of civil procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged;

4. Keep for the district court, in separate volumes, an index of all suits, labeled "General index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page of minute-book of district court"; also, an index labeled "General index—defendants," each page of which must be divided into seven columns under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page in minute-book of district court";

5. Keep a minute-book, which must contain the daily proceedings of court, which may be signed by the clerk, which minute-book must be indexed in the names of both defendant and plaintiff;

6. Keep a book called "Record of probate proceedings," which must contain all the orders and proceedings of the district court sitting in probate matters, as prescribed in the code of civil procedure, which index must be indexed in the name of the deceased person, the executor or administrator, the guardian or ward;

7. Keep a book called the "Probate record book," in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers, as prescribed in the code of civil procedure, which record must be indexed in like manner as the "Record of probate proceedings";

8. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "Declaration of intention to become citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "Naturalization—Final papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission, and the page of the minute-book or book of record containing the order admitting him a citizen;

9. Keep a book, called "Register of criminal actions," in which must be entered the title and number of the action, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the name of every witness, number of days in attendance, and his legal fees, and a proper index to the same;

10. Keep a book, called a "Register of probate and guardianship proceedings," in which must be entered the name of the estate, the register number, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the fees charged;

11. Keep an index book of persons sent to the insane asylum, as provided in section 1438 of this code;

12. Keep a fee book, in which must be shown, in an itemized form, all fees that he has received for any services rendered as such clerk;

13. Keep a book, called a "Book of jurors' certificates," in which must be contained the blank certificates and stubs to be filled, as provided in this code;

14. Keep a "witness book," in which must be contained blank certificates and stubs to be filled, as provided in this code;

15. Keep a record of the attendance of all jurors, and of witnesses in criminal actions, and compute the mileage of each.

History: En. Sec. 4440, Pol. C. 1895; codes, in *State ex rel. Anderson v. District Court*, 56 M 244, 184 P 218; *State v. Reed*, 65 M 51, 61, 210 P 756; *State v. Turlock*, 76 M 549, 559, 248 P 169.
 re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R. C. M. 1921. Cal. Pol. C. Sec. 4204.

References

Cited or applied as section 3048, revised

4816. Other duties. He must keep such other records and perform such other duties as are prescribed by law.

History: En. Sec. 4441, Pol. C. 1895; re-en. Sec. 3049, Rev. C. 1907; re-en. Sec. 4816, R. C. M. 1921.

4817. Indexes to court records. Hereafter each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records now required by law, a book called "General index to court records," and also a second book to be called "Inverse general index to court records." The pages of the "General index" shall be divided into eighteen columns, and the pages of the "Inverse general

index” shall be divided into five columns, with heads to the respective columns as follows:

FOR THE “GENERAL INDEX” THUS:

No.	Plaintiff	Defendant	Nature of Action	Date Begun	Entries in Court Record	Pages	Date Dismissed	Date of Judgment	Amount of Judgment	Judg- ment Record		Judg- ment Docket		Execution Date Issue	Execu- tion Book		Order of Sale		Date Appealed	Remittitur Date Filed	Remarks
										Book	Page	Book	Page		Book	Page	Book	Page			

FOR THE “INVERSE GENERAL INDEX” THUS:

No.	Defendants	Plaintiffs	Nature of Action	Date Begun	

History: En. Sec. 4442, Pol. C. 1895; re-en. Sec. 3050, Rev. C. 1907; re-en. Sec. 4817, R. C. M. 1921.

4818. Duties concerning same. Said clerk shall cause to be made in each of said index books correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the “General index” and alphabetically by the name of the defendants in the “Inverse general index,” continuing to make such entries in the manner aforesaid from time to time as the progress of the case may require.

History: En. Sec. 4443, Pol. C. 1895; re-en. Sec. 3051, Rev. C. 1907; re-en. Sec. 4818, R. C. M. 1921.

4818.1. Index of bonds in criminal cases to be kept. That clerks of the district courts of the counties in the state of Montana, shall hereafter

keep proper books for indexing bonds given in criminal cases and all such bonds filed therein shall be entered showing the title and docket number of the case in which such bond is filed, the names of principals and sureties on such bonds in alphabetical order, the date and amount of the bond and upon its release, the date of the order or authority for such release.

History: En. Sec. 1, Ch. 47, L. 1923.

CHAPTER 366

COUNTY ATTORNEY

- Section 4819. Duties of county attorney.
4820. Legal advisor of board of county commissioners.
4821. Authority to sue to recover money illegally paid.
4822. Must not act as attorney for claims against his own county.
4823. Other duties.

4819. Duties of county attorney. The county attorney is the public prosecutor, and must:

1. Attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed, and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county treasurer;

5. On the first Monday of January, April, July, and October, in each year, file with the county clerk an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the county treasurer;

6. Give when required, and without fee, his opinion in writing to the county, district, and township officers, on matters relating to the duties of their respective offices;

7. Keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein.

8. When ordered or directed by the attorney general so to do, to promptly institute and diligently prosecute in the proper court, and in the name of the state of Montana, any criminal or civil action or special proceeding, it being hereby declared that the supervisory powers granted to the attorney general by section 199 (5) of these codes, include the power to order and direct said county attorneys in all matters pertaining to the duties of their office.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R. C. M. 1921; amd. Sec. 1, Ch. 187, L. 1935. Cal. Pol. C. Sec. 4256.

Operation and Effect

The county attorney, in his every duty, is under the supervisory powers of the attorney general; nor is there any official act to be discharged by him in the performance of which he may not, where public interests require it, be assisted by that official. State ex rel. Nolan v. District Court, 22 M 25, 30, 55 P 916.

Criminal cases arising under the state laws must be prosecuted in the name of the state and by the county attorney, under this section and the constitution. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

4820. Legal advisor of board of county commissioners. The county attorney is the legal advisor of the board of county commissioners. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county which are unjust or illegal.

History: En. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907; re-en. Sec. 4820, R. C. M. 1921. Cal. Pol. C. Sec. 4257.

References

State Bank of Outlook v. Sheridan County, 72 M 1, 5, 230 P 1097; In re Hyde, 73 M 363, 366, 236 P 248.

4821. Authority to sue to recover money illegally paid. If the board of county commissioners, without authority of law, order any money paid as a salary, fees, or for any other purposes, and such money has been actually paid; or if any other county officer has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners or by law, and the same has been paid, the county attorney is empowered, and it is his duty, to institute an action in the name of the county against such person or persons to recover the money so paid, and twenty-five per cent. damages for the use thereof; and no order of the board of county commissioners therefor is necessary to maintain such suit; but when the money has not been paid on such order or warrants, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

History: En. Sec. 4452, Pol. C. 1895; re-en. Sec. 3054, Rev. C. 1907; re-en. Sec. 4821, R. C. M. 1921.

Operation and Effect

Under this section an action to recover county funds unlawfully paid must be brought by the county attorney in the name of the county, it being the real party in interest, and cannot therefore be maintained by a taxpayer. Gregg v. Bayers, 73 M 165, 166, 235 P 337.

Id. Where a county attorney fails or refuses to bring an action to recover

Except when the county attorney is himself the accused, the duty devolves upon him to prosecute public offenses. State ex rel. McGrade v. District Court, 52 M 371, 373, 157 P 1157.

After a criminal case has been appealed to the supreme court, the duties of the county attorney therein and his power to contract expenses for the county cease. Independent Publishing Co. v. County of Lewis and Clark, 30 M 83, 85, 75 P 860.

References

Cited or applied as section 3052, revised codes, in State v. Barry, 45 M 582, 585, 124 P 774; State v. Vuckovich, 61 M 480, 491, 203 P 491; State Bank of Outlook v. Sheridan County, 72 M 1, 5, 230 P 1097.

county funds illegally paid out, he may be compelled to act by mandamus or proceedings for his summary removal may be instituted.

Failure of a taxpayer to appeal to the district court from an order of the board of county commissioners allowing a claim against the county under the authority given him by section 4610, does not limit the right of the county attorney to sue in the name of the county to recover moneys illegally paid under this section. Carbon County v. Draper, 84 M 413, 417, 276 P 667.

4822. Must not act as attorney for claims against his own county. The county attorney, except for his own services, must not present any

claim, account, or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

History: En. Sec. 4453, Pol. C. 1895;
re-en. Sec. 3055, Rev. C. 1907; re-en. Sec.
4822, R. C. M. 1921. Cal. Pol. C. Sec. 4258.

References
State Bank of Outlook v. Sheridan
County, 72 M 1, 5, 230 P 1097.

4823. Other duties. The county attorney must perform such other duties as are prescribed by law.

History: En. Sec. 4454, Pol. C. 1895;
re-en. Sec. 3056, Rev. C. 1907; re-en. Sec.
4823, R. C. M. 1921.

References
Cited or applied as section 3056, revised
codes, with preceding sections, in State
ex rel. McGrade v. District Court, 52 M
371, 375, 157 P 1157.

CHAPTER 367

COUNTY AUDITOR

- Section 4824. Creation of office of county auditor.
4824.1. Performance of duties heretofore performed by county auditors.
4825. Election—term—qualifications.
4826. Oath—bond.
4827. Residence—salary.
4828. May administer oath.
4829. Must keep records.
4830. Must audit and investigate claims.
4831. Must record list of claims.
4832. Must examine books and accounts.
4833. County superintendent of poor.
4834. Other duties.

4824. Creation of office of county auditor. The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third and fourth classes. Provided, however, that in counties of the 5th class where a county auditor has been elected he shall hold office until the expiration of his present term, but no longer.

History: En. Sec. 1, p. 227, L. 1891;
re-en. Sec. 4560, Pol. C. 1895; re-en. Sec.
3100, Rev. C. 1907; re-en. Sec. 4824, R. C.
M. 1921; amd. Sec. 1, Ch. 117, L. 1923.

NOTE.—For history of earlier acts, see
State ex rel. McGinniss v. Dickson, 26 M
391, 68 P 468.

Operation and Effect

Under this section a county of the sixth class is not entitled to an auditor. Held, that where such a county entered

into a contract with a public accountant for an audit of its books at a monthly compensation of \$150 for a period of several years, the contract is void for the reason that it nullified this section. Judith Basin Co. v. Livingston et al., 89 M 438, 446, 298 P 356.

References

Cited as section 1 of the act of March 7, 1891, in State ex rel. McGinniss v. Dickson, 26 M 391, 392, 68 P 468; Jones v. Cooney et al., 81 M 340, 263 P 429.

4824.1. Performance of duties heretofore performed by county auditors. That hereafter the duties heretofore performed by auditors in counties in which they shall have been elected, shall be performed by the same officers charged with the performance of those duties in counties below the fifth class.

History: En. Sec. 2, Ch. 117, L. 1923.

4825. Election—term—qualifications. There shall be elected in and for each county of the class named in the preceding section, at the general election to be held in November, 1892, and quadrennially thereafter, some male person to serve as county auditor of the county for which he

shall be elected for the term of four years, and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of twenty-one years, and who shall not have been, for at least two years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R. C. M. 1921.

otherwise qualified, is entitled to hold the office of county auditor. *Rose v. Sullivan*, 56 M 480, 185 P 562.

References

Operation and Effect

Since the adoption of the suffrage amendment to the constitution, a woman,

Cited or applied as section 2 of the act of March 7, 1891, in *State ex rel. McGinniss v. Dickinson*, 26 M 391, 393, 68 P 468.

4826. Oath—bond. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such an oath as is required of other county officers, and shall execute a bond to the county in which he shall have been elected or appointed in the penal sum of fifteen thousand dollars, with at least two good and sufficient sureties, for the faithful discharge of the duties of his office; said bond shall be approved by the board of county commissioners of the county, which said bond, together with the oath of office, shall be filed with the county clerk and recorder of said county.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562 Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R. C. M. 1921.

4827. Residence—salary. The county auditor shall reside and keep his principal office at the county seat of the county for which he shall have been elected or appointed, and he shall receive the annual compensation provided by law, payable quarterly by warrants drawn on the treasury of the county treasurer, and shall receive no other compensation or emolument whatsoever for any service or services rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county, other than the county seat, and then only after the same has been ordered and advised by the board of county commissioners.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R. C. M. 1921.

4828. May administer oath. The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices, and shall have power to issue process and compel the attendance of witnesses before them and examine into any matter they may deem necessary, and any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: En. Sec. 5, p. 228, L. 1891; re-en. Sec. 4564, Pol. C. 1895; re-en. Sec. 3104, Rev. C. 1907; re-en. Sec. 4828, R. C. M. 1921.

References

Cited or applied as section 3104, revised codes, in *State ex rel. Dolan v. Major*, 58 M 140, 152, 192 P 618.

4829. Must keep records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office, and each county auditor on going out of office, shall deliver over to his successor in office all documents, books, records, and property in his hands belonging to the county.

History: En. Sec. 6, p. 229, L. 1891; re-en. Sec. 4565, Pol. C. 1895; re-en. Sec. 3105, Rev. C. 1907; re-en. Sec. 4829, R. C. M. 1921.

4830. Must audit and investigate claims. It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine into all claims presented to him, and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval indorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose. In all counties having a county auditor, all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers, or contracted for by the county commissioners, shall be investigated, examined, and inspected by the county auditor, who shall indorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn. In all counties having a county auditor, no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; provided, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same.

History: En. Sec. 7, p. 229, L. 1891; re-en. Sec. 4566, Pol. C. 1895; re-en. Sec. 3106, Rev. C. 1907; re-en. Sec. 4830, R. C. M. 1921.

Operation and Effect

The word "audit" is not used in its narrow and restricted sense, and does not limit the auditor to merely ascertaining whether the claims are in proper form and mathematically correct. *State ex rel. Dolin v. Major*, 58 M 140, 152, 192 P 618.

Id. It would seem that the proviso empowering district judges to order the payment of claims against the county after the approval by the auditor, is repugnant

to section 1 of article IV of the constitution for the reason that it undertakes to cast upon district judges a power which pertains exclusively to the executive branch of the government.

Id. The board may exercise its judgment in ordering paid those claims which have the approval of the auditor, but the only power which the board has in reference to claims disapproved by him is to disallow them.

References

State ex rel. Loekwood v. Tylers, 64 M 124, 134, 208 P 1081.

4831. Must record list of claims. The county clerk and recorder shall return to the county auditor, within ten days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected either in whole or in part by them, which list shall be recorded by the auditor in a book kept for that purpose, and carefully preserved in his office.

History: En. Sec. 8, p. 230, L. 1891; re-en. Sec. 4567, Pol. C. 1895; re-en. Sec. 3107, Rev. C. 1907; re-en. Sec. 4831, R. C. M. 1921.

4832. Must examine books and accounts. It shall be the duty of the county auditor to make an examination of the books and accounts of the

county treasurer, the county clerk and recorder, the sheriff, and clerk of the district court, and all other county and township officers, within fifteen days next preceding each regular session of the board of county commissioners at their next session immediately following such examination, unless a longer time be granted him by the board in which to report the same, and said report shall contain a full and complete statement of the moneys received and disbursed by each of the said officers since the last examination and report of the same, and for this purpose the county auditor shall have free access to all books and papers in each of said offices.

History: En. Sec. 9, p. 230, L. 1891; re-en. Sec. 4568, Pol. C. 1895; re-en. Sec. 3108, Rev. C. 1907; re-en. Sec. 4832, R. C. M. 1921.

References

Judith Basin Co. v. Livingston et al., 89 M 438, 446, 298 P 356.

4833. County superintendent of poor. The county auditor hereby created is also made county superintendent of the poor, whose duty it shall be, under such rules and regulations as may be prescribed by the county commissioners, to care for and examine all claims that may be made upon the county for charity; also to have, under the direction of the county commissioners, general supervision of the county poorhouse or farm.

History: En. Sec. 10, p. 230, L. 1891; re-en. Sec. 4569, Pol. C. 1895; re-en. Sec. 3109, Rev. C. 1907; re-en. Sec. 4833, R. C. M. 1921.

Operation and Effect

While the county auditor is made the superintendent of the poor under this sec-

tion, who must care for and examine all claims that may be made upon the county for charity, he must do so under such rules and regulations as the commissioners may prescribe in their discretion. Jones v. Cooney et al., 81 M 340, 348, 263 P 429.

4834. Other duties. The county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners; provided, a reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this act.

History: En. Sec. 11, p. 231 L. 1891; re-en. Sec. 4570, Pol. C. 1895; re-en. Sec. 3110, Rev. C. 1907; re-en. Sec. 4834, R. C. M. 1921.

References

Judith Basin Co. v. Livingston et al., 89 M 438, 446, 298 P 356.

CHAPTER 368

COUNTY SURVEYOR

- Section 4835. Qualifications of county surveyor and deputies.
4836. County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor.
4837. Records of surveys and plats, etc.
4838. Office and equipment to be furnished county surveyor.
4839. County surveyor to make surveys, keep record of them, furnish copies, etc.
4840. Surveys of lands in two counties.
4841. Order for survey where title to lands in two counties disputed.
4842. Courses to be run by true meridian—variation and date to be noted.
4843. Surveyor to employ assistants, when.
4844. Appointment of disinterested person when county surveyor interested in lands.
4845. Must inspect road works.
4846. Must not be interested in contracts.
4847. Other surveyor may be employed.

4835. Qualifications of county surveyor and deputies. A county surveyor shall be a professional engineer, not less than twenty-two years of age, who shall have been in active practice of his profession for at least three years, and who shall have had responsible charge of work as principal or assistant for at least one year; graduation from a school of engineering shall be considered as equivalent to two years of active practice. All deputies must also have a practical knowledge of engineering.

History: En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R. C. M. 1921.

References

Hicks v. Stillwater County, 84 M 38, 42 et seq., 274 P 296.

4836. County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor. The county surveyor shall work under the direction of the board of county commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the order or approval of the board of county commissioners being first obtained therefor; he shall make all surveys, establish all grades, prepare plans, specifications, and estimates; he shall report any delinquency or inefficiency of any road overseer or other person employed upon the roads within his county; he shall, from time to time, make progress reports and estimates of all work, and such other facts in relation thereto as may be required by the state highway commission, board of county commissioners, or both.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R. C. M. 1921.

Operation and Effect

Held, that in determining whether county commissioners must employ the county surveyor to construct drains for the preservation of highways, section 1630, a special statute, declaring that the road supervisor or some other person

designated by the board has authority to construct drains, must prevail over this section, requiring the county surveyor to make all surveys and establish all grades. Durland v. Prickett et al., 98 M 399, 408, 39 P 2d 652.

References

Hicks v. Stillwater County, 84 M 38, 42, et seq., 274 P 296.

4837. Records of surveys and plats, etc. The county surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose; and shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him, and have recorded therein a description of every public highway within the county; provided, further, that all such books of record, together with original drawings and original book or books of field notes, calculations, and computations shall be, are, and shall remain the property of the county, and preserved as such.

History: En. Sec. 3, Ch. 50, L. 1919; re-en. Sec. 4837, R. C. M. 1921.

4838. Office and equipment to be furnished county surveyor. The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law.

History: En. Sec. 4, Ch. 50, L. 1919; re-en. Sec. 4838, R. C. M. 1921.

Operation and Effect

Held that the complaint of a county surveyor in an action against the county

to recover the reasonable value of the use of a transit employed by him in the performance of his duties during his term of office, with the knowledge and acquiescence of the county commissioners and for the benefit of the county stated a cause

of action as upon an implied contract, in view of the provisions of this section making it the duty of the county to furnish plaintiff with the necessary equip-

ment for the proper discharge of his duties in making surveys, establishing grades, etc. *Hicks v. Stillwater County*, 84 M 38, 42 et seq., 274 P 296.

4839. County surveyor to make surveys, keep record of them, furnish copies, etc. The county surveyor must make any survey that may be required by order of the court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made, progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. He must also keep a correct and plain record of all surveys, made by him for the county or for individuals or corporations, which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office.

History: En. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907; re-en. Sec. 4839, R. C. M. 1921. Cal. Pol. C. Sec. 4268.

4840. Surveys of lands in two counties. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and on such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

History: En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907; re-en. Sec. 4840, R. C. M. 1921. Cal. Pol. C. Sec. 4269.

4841. Order for survey where title to lands in two counties disputed. When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907; re-en. Sec. 4841, R. C. M. 1921. Cal. Pol. C. Sec. 4270.

4842. Courses to be run by true meridian—variation and date to be noted. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

History: En. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907; re-en. Sec. 4842, R. C. M. 1921. Cal. Pol. C. Sec. 4271.

4843. Surveyor to employ assistants, when. If a party for whom the county survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistants necessarily employed.

History: En. Sec. 4474, Pol. C. 1895; **References** re-en. Sec. 3061, Rev. C. 1907; re-en. Sec. *Hicks v. Stillwater County*, 84 M 38, 42 et seq., 274 P 296. 4843, R. C. M. 1921. Cal. Pol. C. Sec. 4272.

4844. Appointment of disinterested person when county surveyor interested in lands. When the county surveyor is interested in any land, the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person, and

the person so appointed is for the purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

History: En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907; re-en. Sec. 4844, R. C. M. 1921. Cal. Pol. C. Sec. 4275.

4845. Must inspect road works. The county surveyor shall also, at the direction of the county commissioners, direct and inspect the work and expenditures of the road supervisors; also furnish plans and specifications for road or bridge work, and he shall be chairman of all boards of road viewers.

History: En. Sec. 4476, Pol. C. 1895; re-en. Sec. 3063, Rev. C. 1907; re-en. Sec. 4845, R. C. M. 1921.

4846. Must not be interested in contracts. The county surveyor shall not be interested, directly or indirectly, in any contract for the construction or repair of roads or bridges under his charge, or in any claim or voucher for labor or material in connection with such repairs or construction.

History: En. Sec. 4477, Pol. C. 1895; re-en. Sec. 3064, Rev. C. 1907; re-en. Sec. 4846, R. C. M. 1921.

4847. Other surveyor may be employed. If the county surveyor neglect, refuse or be incompetent to perform the duties prescribed in section 4845 of this code, it shall be the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the law governing the county surveyor.

History: En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907; re-en. Sec. 4847, R. C. M. 1921.

CHAPTER 369

COUNTY CORONER

Section 4848. Coroner to hold inquest.

4849. Coroner to bury body, when—expense of interment.

4850. To deliver to county treasurer property, etc., found on body.

4851. Statement before allowing accounts of coroner.

4852. Justice of peace to act as coroner in certain cases.

4853. Coroner to discharge duties of sheriff, when.

4854. Must keep register.

4855. Stenographers for coroners in counties of first class.

4856. Inquest in case of prisoners in state prison.

4857. Payment of costs of inquest.

4848. Coroner to hold inquest. The coroner must hold inquests, as provided in sections 12381 to 12392 of the penal code.

History: En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R. C. M. 1921. Cal. Pol. C. Sec. 4285.

4849. Coroner to bury body, when—expense of interment. When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial, the expenses are a legal charge against the county.

History: En. Sec. 4491, Pol. C. 1895; re-en. Sec. 3067, Rev. C. 1907; re-en. Sec. 4849, R. C. M. 1921. Cal. Pol. C. Sec. 4286.

4850. To deliver to county treasurer property, etc., found on body. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased any money or other property found upon the dead body.

History: En. Sec. 4492, Pol. C. 1895; re-en. Sec. 3068, Rev. C. 1907; re-en. Sec. 4850, R. C. M. 1921. Cal. Pol. C. Sec. 4287.

4851. Statment before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;

2. The disposition made of such property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R. C. M. 1921. Cal. Pol. C. Sec. 4288.

4852. Justice of peace to act as coroner in certain cases. If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

History: En. Sec. 4494, Pol. C. 1895; re-en. Sec. 3070, Rev. C. 1907; re-en. Sec. 4852, R. C. M. 1921. Cal. Pol. C. Sec. 4289.

4853. Coroner to discharge duties of sheriff, when. In the cases specified in section 4792 of this code the coroner must discharge the duties of sheriff.

History: En. Sec. 4495, Pol. C. 1895; re-en. Sec. 3071, Rev. C. 1907; re-en. Sec. 4853, R. C. M. 1921. Cal. Pol. C. Sec. 4290.

4854. Must keep register. It is the duty of the coroner of each county to keep an official register, to be labeled "Coroner's register," in which he must enter the date of holding all inquests, the name of the deceased, when known, and when not, such description of the deceased as may be sufficient for identification; property found on the person of the deceased, if any; what disposition of the same was made by the coroner; the cause of death, when known, and any other information which may pertain to the identity of the deceased.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907; re-en. Sec. 4854, R. C. M. 1921.

4855. Stenographers for coroners in counties of first class. In each county of the first class, the coroner may, with consent of the county commissioners, appoint a stenographer, who shall hold such position during the pleasure of the coroner making the appointment, and who shall receive as salary the sum of one hundred dollars per month, to be paid monthly out of the contingent fund of the county upon the order of the board of county commissioners.

History: En. Sec. 1, Ch. 8, L. 1911; re-en. Sec. 4855, R. C. M. 1921.

4856. Inquest in case of prisoners in state prison. When a prisoner confined in the state prison shall die, the coroner of the county wherein

the state prison is located may hold an inquest as provided in sections 12381 to 12392 of these codes.

History: En. Sec. 1, Ch. 122, L. 1909; re-en. Sec. 4856, R. C. M. 1921.

4857. Payment of costs of inquest. Whenever an inquest is held under the provisions of this act the county clerk of the county where such inquest is had shall make out a statement of all the costs incurred by the county in such inquest, properly certified by the coroner of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such inquest was had.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R. C. M. 1921.

CHAPTER 370

PUBLIC ADMINISTRATOR

Section 4858. Powers and duties of public administrator.

4858. Powers and duties of public administrator. The powers and duties of the public administrator are defined by sections 9990 to 10017 of the code of civil procedure.

History: New section recommended by code commissioner, 1921.

CHAPTER 371

CONSTABLES AND JUSTICES OF THE PEACE

Section 4859. Constables to attend justices' courts.

4860. Bond of constable.

4861. Governed by the law prescribing sheriffs' duties.

4862. Duties of justices of the peace.

4863. Justices not to practice law.

4859. Constables to attend justices' courts. Constables must attend the courts of justices of the peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

History: En. Sec. 4550, Pol. C. 1895; re-en. Sec. 3096, Rev. C. 1907; re-en. Sec. 4859, R. C. M. 1921. Cal. Pol. C. Sec. 4314.

4860. Bond of constable. Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the state of Montana in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section as justices of the peace are required by law to do.

History: En. Sec. 2, p. 90, L. 1901; re-en. Sec. 3097, Rev. C. 1907; re-en. Sec. 4860, R. C. M. 1921.

4861. Governed by the law prescribing sheriffs' duties. All the provisions of sections 4773 to 4794 inclusive of this code, except the fourth and sixth subdivisions of section 4774, apply to constables and govern their powers, duties and liabilities.

History: En. Sec. 4551, Pol. C. 1895; re-en. Sec. 3098, Rev. C. 1907; re-en. Sec. 4861, R. C. M. 1921. Cal. Pol. C. Sec. 4315.

4862. Duties of justices of the peace. Justices of the peace must perform such duties as are prescribed in sections 9619 to 9724 of the code of civil procedure, and such other duties as are prescribed by law.

History: En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907; re-en. Sec. 4862, R. C. M. 1921. Cal. Pol. C. Sec. 4316.

4863. Justices not to practice law. No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R. C. M. 1921.

CHAPTER 372

SALARIES AND FEES OF COUNTY OFFICERS AND DEPUTIES, JURORS AND WITNESSES

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| Section | 4864. Disposal of fees collected by county officers. |
| | 4865. What officers to receive fees for their own use. |
| | 4866. Counties classified. |
| | 4867. Salaries of county officers. |
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| | 4869. Salary of county superintendent of schools in first, second, third and fourth class counties. |
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| | 4872. Appointment of deputies—payment of salaries. |
| | 4873. Compensation allowed deputies and assistants. |
| | 4874. Number and salaries of deputies and assistants to be fixed by commissioners. |
| | 4875. Number of deputies allowed. |
| | 4876. Designation of chief deputy by county clerk. |
| | 4877. Appointment and compensation of chief deputy assessor—other deputy assessors. |
| | 4878. Extra deputies for county officers. |
| | 4879. Qualifications of deputy sheriffs, marshals and policemen. |
| | 4880. Maximum number of deputy treasurers, assessors, auditors and county attorneys. |
| | 4881. Deputies to county attorneys in first class counties. |
| | 4882. Deputy treasurer in counties of first class. |
| | 4883. Deputy auditors in counties of first class. |
| | 4884. Mileage of all officers. |
| | 4884.1. Same—liability of approving board for exceeding authorized amount—use of railroad when suitable required. |
| | 4885. Mileage and expense of sheriff. |
| | 4886. Fees for board of prisoners. |
| | 4887. Fees must be paid into county treasury, when. |
| | 4888. Statement and affidavit of fees collected. |
| | 4889. Treasurer to file affidavits and statements. |
| | 4890. Payment of salary not to be made until statement and report filed. |
| | 4891. Board not to allow compensation of deputies until affidavit filed. |
| | 4892. Fees must be paid in advance. |

- 4893. No fees to be charged state, county, or public officer.
- 4894. Fees for naturalization.
- 4895. Officer must give items and receipt.
- 4896. Must keep statement posted in this office.
- 4897. Officer must not receive any other fees than those named.
- 4898. May demand fees for publication of notice.
- 4899. Meaning of term "folio."
- 4900. Mileage—how computed.
- 4901. Same.
- 4902. Witnesses on behalf of state or county.
- 4903. Certificate of clerk to witness.
- 4904. Preceding sections construed.
- 4905. Officers to complete the business of their offices.
- 4906. Penalty for false oath.
- 4907. Penalty for failure to pay over fees.
- 4908. Penalty for making false report.
- 4909. Penalty for sheriff falsely representing his mileage.
- 4910. Sheriff falsely representing his expenses for boarding prisoners.
- 4911. Board of county commissioners to declare office vacant, when.
- 4912. Fees of secretary of state and state auditor.
- 4913. Fees of clerk of supreme court.
- 4914. Fees of notaries public.
- 4915. Fees of commissioner of deeds.
- 4916. Fees of sheriff.
- 4917. Fees of county clerk.
- 4918. Fees of clerk of district court.
- 4919. Fees of clerk in probate proceedings.
- 4920. Fees of county treasurer for tax deed.
- 4921. Fees of county surveyor.
- 4922. Fees of coroner.
- 4923. Fees of public administrator.
- 4924. Fees of justices of the peace in civil actions.
- 4925. Fees, when payable.
- 4926. Fees of justices of the peace in criminal actions.
- 4927. Miscellaneous fees.
- 4928. Justices may retain fees, when.
- 4929. Salaries of justices of the peace in certain townships—office hours—quarters.
- 4930. Collection and disposition of fees in townships of ten thousand and upwards—itemized statement.
- 4931. Penalty for violation of law.
- 4932. Fees of constable.
- 4933. Jurors' fees.
- 4934. Same—for what time paid.
- 4935. Compensation of jurors in court not of record and at coroner's inquests.
- 4936. Witnesses' fees.
- 4937. Duties of clerk as to jurors.
- 4938. Duties of clerk in reference to witnesses' certificate.
- 4939. Statement of clerk to be sent to board of county commissioners.
- 4940. Clerk must keep a record of witnesses in criminal actions.
- 4941. Witnesses in courts not of record.
- 4942. Witnesses in criminal actions or coroner's inquests.
- 4943. In civil actions must be paid by party subpoenaing.
- 4944. Witness may demand advance payment of fees in civil action.
- 4945. Criminal actions not more than six to be subpoenaed without order of court.
- 4946. Interpreters to be paid as witnesses.
- 4947. Expert witnesses.
- 4948. County superintendent's traveling expenses.
- 4949. County commissioners to audit claims.
- 4950. Limitation of chapter.

4864. Disposal of fees collected by county officers. No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted

for and paid to the county treasurer as provided by section 4887 of this code and shall be credited to the general fund of the county.

History: En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R. C. M. 1921; amd. Sec. 3, Ch. 141, L. 1925.

and they become a part of the public moneys of the county. *Hauser v. Miller*, 37 M 22, 25, 94 P 197.

Operation and Effect

The fees of the clerk in probate proceedings, exacted under section 4919, must be paid by him to the county treasurer,

References

Cited or applied as section 4591, political code, in *Hogan v. Cascade County*, 36 M 183, 186, 92 P 529.

4865. What officers to receive fees for their own use. The county surveyor, coroner, public administrator, justice of the peace, and constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter. All other county officers receive salaries.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907; re-en. Sec. 4865, R. C. M. 1921.

to have "fees and emoluments" other than salaries from the state or county. *Scharrenbroich v. Lewis and Clark County*, 33 M 250, 257, 83 P 482.

Operation and Effect

The last sentence in this section is unnecessary, unless its purpose is to advise the people that salaried officers are not

In this section the term "fees" means a mode of compensation different from salary. *State v. Story*, 53 M 573, 578, 165 P 748.

4866. Counties classified. The counties are classified, for the purposes of this chapter, as prescribed in section 4741 of this code.

History: En. Sec. 4593, Pol. C. 1895; re-en. Sec. 3115, Rev. C. 1907; re-en. Sec. 4866, R. C. M. 1921.

4867. Salaries of county officers. The county officers are entitled to receive an annual compensation or salary for services according to the following classification, to-wit:

First Class.

Treasurer, three thousand five hundred dollars;
 Sheriff, four thousand five hundred dollars;
 Assessor, three thousand five hundred dollars;
 County clerk, three thousand five hundred dollars;
 County auditor, three thousand dollars;
 Clerk of the district court, three thousand five hundred dollars;
 County attorney, three thousand five hundred dollars.

Second Class.

Treasurer, three thousand dollars;
 Sheriff, three thousand five hundred dollars;
 Assessor, three thousand dollars;
 County clerk, three thousand dollars;
 County auditor, two thousand five hundred dollars;
 Clerk of the district court, three thousand dollars;
 County attorney, three thousand dollars.

Third Class.

Treasurer, three thousand dollars;
 Sheriff, three thousand five hundred dollars;

Assessor, two thousand seven hundred fifty dollars;
 Auditor, two thousand two hundred fifty dollars;
 County clerk, three thousand dollars;
 Clerk of the district court, three thousand dollars;
 County attorney, three thousand dollars.

Fourth Class.

Treasurer, two thousand five hundred dollars;
 Sheriff, two thousand seven hundred fifty dollars;
 Assessor, twenty-five hundred dollars;
 Auditor, two thousand two hundred fifty dollars;
 County clerk, two thousand five hundred dollars;
 Clerk of the district court, two thousand five hundred dollars;
 County attorney, two thousand five hundred dollars.

Fifth Class.

Treasurer, two thousand five hundred dollars;
 Sheriff, two thousand seven hundred fifty dollars;
 Assessor, two thousand two hundred fifty dollars;
 County clerk, two thousand five hundred dollars;
 Clerk of the district court, two thousand five hundred dollars;
 County attorney, two thousand dollars.

Sixth Class.

Treasurer, two thousand dollars;
 Sheriff, two thousand two hundred fifty dollars;
 Assessor, one thousand eight hundred dollars;
 County clerk, two thousand dollars;
 Clerk of the district court, one thousand eight hundred dollars;
 County attorney, one thousand eight hundred dollars.

Seventh Class.

Treasurer, one thousand eight hundred dollars;
 Sheriff, two thousand dollars;
 Assessor, fifteen hundred dollars;
 County clerk, one thousand eight hundred dollars;
 Clerk of the district court, one thousand eight hundred dollars;
 County attorney, one thousand five hundred dollars.

History: En. Sec. 3116, Rev. C. 1907; amd. Sec. 1, Ch. 221, L. 1919; amd. Sec. 1, Ch. 7, Ex. L. 1919; amd. Sec. 1, Ch. 151, L. 1921; re-en. Sec. 4867, R. C. M. 1921.

References

Cited or applied as section 4594, political code, in *Jobb v. County of Meagher*,

20 M 424, 430, 51 P 1034; before amendment, in *Penwell v. Board of County Commrs. of Lewis and Clark County*, 23 M 351, 356, 59 P 167; as section 3116, revised codes, before amendment, in *Peterson v. City of Butte*, 44 M 401, 410, 120 P 483; *State ex rel. McGrade v. District Court*, 52 M 371, 375, 157 P 1157.

4868. Payment of salaries of county officers and assistants. The salaries of the several county officers and their assistants must be paid monthly out of the general fund of the county, upon the order of the board of county commissioners, except the salary of the county attorney, which is payable monthly, one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the

state auditor, upon the presentation of a certificate from the board of county commissioners stating the amount for which the same is to be drawn.

History: En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R. C. M. 1921; amd. Sec. 4, Ch. 141, L. 1925.

4869. Salary of county superintendent of schools in first, second, third and fourth class counties. In all counties of the first, second, third, and fourth classes the county superintendents of schools shall be paid salaries of twenty-four hundred dollars (\$2400.00) per annum.

History: En. Sec. 1, Ch. 219, L. 1919; re-en. Sec. 4869, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1929.

4870. Same—counties of fifth and sixth classes. In all counties of the fifth and sixth classes the county superintendents of schools shall be paid salaries of two thousand dollars (\$2000.00) per annum.

History: En. Sec. 2, Ch. 219, L. 1919; re-en. Sec. 4870, R. C. M. 1921; amd. Sec. 2, Ch. 85, L. 1929.

4871. Same—seventh class counties. In all counties of the seventh class the county superintendents of schools shall be paid salaries of eighteen hundred dollars (\$1800.00) per annum.

History: En. Sec. 3, Ch. 219, L. 1919; re-en. Sec. 4871, R. C. M. 1921; amd. Sec. 3, Ch. 85, L. 1929.

4872. Appointment of deputies—payment of salaries. The number of deputies allowed to county officers and their compensation must not exceed the maximum limits prescribed in this chapter. Salaries must be allowed and paid monthly upon the order of the board of county commissioners, and paid out of the contingent fund.

History: En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R. C. M. 1921.

NOTE.—A portion of the above section being no longer applicable was omitted from this code in 1921.

Operation and Effect

The board of county commissioners has the power to determine, within the maximum limits prescribed by law, the number

and compensation of deputies allowed by the sheriff. *Jobb v. County of Meagher*, 20 M 424, 431, 432, 51 P 1034; *Hogan v. Cascade County*, 36 M 183, 185, 92 P 529.

References

Cited or applied as section 4603, political code, in *Jobb v. County of Meagher*, 20 M 424, 430, 51 P 1034; *Penwell v. Board of County Commrs. of Lewis and Clark County*, 23 M 351, 354, 59 P 167.

4873. Compensation allowed deputies and assistants. The annual compensation allowed to any deputy or assistant is as follows:

Counties of the First Class.

Sheriff.

One under-sheriff, at a rate of not less than twenty-six hundred dollars.

One chief deputy and clerk, at a rate of not less than two thousand dollars.

All other deputies, at a rate of not less than eighteen hundred dollars.

Clerk and Recorder.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

All other deputies, at a rate of not less than sixteen hundred fifty dollars.

Clerk District Court.

One chief deputy, at a rate of not less than nineteen hundred and fifty dollars.

Each department deputy clerk, at a rate of not less than eighteen hundred dollars.

All other deputies, at a rate of not less than sixteen hundred fifty dollars.

Treasurer.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, at a rate of not less than sixteen hundred fifty dollars.

Assessors.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, between first Monday of March and August of each year, at a rate of not less than one hundred and fifty dollars per month.

County Attorney.

Chief deputy, at a rate of not less than twenty-four hundred dollars.

Other deputies, at a rate of not less than eighteen hundred dollars.

Auditor.

One chief deputy, at a rate of not less than eighteen hundred dollars.

Other deputies, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Second and Third Class.

County Attorney.

Chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, at a rate of not less than eighteen hundred dollars.

Under-sheriff, at a rate of not less than nineteen hundred fifty dollars.

Each deputy sheriff, at a rate of not less than eighteen hundred dollars.

Chief deputy clerk of the district court, at a rate of not less than nineteen hundred fifty dollars.

Other deputy clerks of the district court, at a rate of not less than eighteen hundred dollars.

Chief deputy treasurer, at a rate of not less than nineteen hundred fifty dollars.

Each deputy treasurer, at a rate of not less than sixteen hundred fifty dollars.

Chief deputy clerk and recorder, at a rate of not less than nineteen hundred fifty dollars.

Each deputy clerk and recorder, at a rate of not less than sixteen hundred fifty dollars.

Chief deputy assessor, at a rate of not less than nineteen hundred fifty dollars.

Each deputy assessor or assistant assessor, at a rate of not less than sixteen hundred fifty dollars.

Each deputy auditor, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Fourth and Fifth Classes.

Under-sheriff, at a rate of not less than nineteen hundred fifty dollars.

Each deputy sheriff and jailor, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks and recorder, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks of the district court, at a rate of not less than sixteen hundred fifty dollars.

Deputy treasurer and deputy assessor allowed by law, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Sixth and Seventh Classes.

Under-sheriff, at a rate of not less than eighteen hundred dollars.

Each deputy sheriff, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks and recorder, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks of the district court, at a rate of not less than sixteen hundred fifty dollars.

Each deputy treasurer and deputy assessor or assistant assessor allowed by law, at a rate of not less than sixteen hundred fifty dollars.

History: En. Sec. 3118, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1909; amd. Sec. 1, Ch. 132, L. 1911; amd. Sec. 1, Ch. 222, L. 1919; re-en. Sec. 4873, R. C. M. 1921.

20 M 424, 430, 51 P 1034; before amendment, in *Penwell v. Board of County Commrs. of Lewis and Clark County*, 23 M 351, 352, 59 P 167; *Hogan v. Cascade County*, 36 M 183, 186, 92 P 529; *Farrell v. Yellowstone County*, 68 M 313, 218 P 559.

References

Cited or applied as section 4596, political code, in *Jobb v. County of Meagher*,

4874. Number and salaries of deputies and assistants to be fixed by commissioners. That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant under this act; provided, the salary of no deputy or assistant shall be more than eighty per cent of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law; where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided for by law for similar deputies or assistants; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners of such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1923.

NOTE.—See *Jobb v. County of Meagher*, 20 M 424, for history of earlier acts.

Operation and Effect

While the board of county commissioners has no power to decrease the compensation of regular deputies of county officers fixed by section 4873, it has discretion, under this section, to fix the com-

pensation of extra deputies appointed for temporary service, at any rate it may deem expedient, provided it does not exceed the rate paid the regular deputies. *Modesitt v. Flathead County* 57 M 209, 187 P 899.

See also *Farrell v. Yellowstone County*, 68 M 313, 218 P 559.

References

State v. Crouch, 70 M 551, 554, 227 P 818.

4875. Number of deputies allowed. The whole number of deputies allowed the county clerk in counties of the first and second classes must not exceed six; in counties of the third class, three; in counties of the fourth and fifth classes, two; in counties of the sixth and seventh classes, one. The whole number of deputies allowed the clerk of the district court in counties of the first and second classes must not exceed one chief deputy and deputies to the number of six; in counties of the third and fourth classes having more than one district judge, four; in counties of the third and fourth classes having one district judge, two; in counties of the fifth, sixth, seventh and eighth classes, one. The whole number of deputies allowed the sheriff is one under-sheriff, and in addition not to exceed the following number of deputies: In counties of the first and second classes, six; in counties of the third and fourth classes, two; in counties of the fifth, sixth, seventh and eighth classes, one. The sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy who shall act as jailor and receive the same salary as other deputy sheriffs.

History: En. Sec. 1, Ch. 75, L. 1905; Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; re-en. Sec. 4875, R. C. M. 1921.

NOTE.—The foregoing section has been changed in this code to conform to the construction placed by the supreme court on the two amendatory acts of 1909 in the case of *Hay v. Hindon*, 40 M 353, 106 P 362.

Operation and Effect

The board of county commissioners has the power to determine, within the maximum limits prescribed by law, the number and compensation of deputies allowed by the sheriff. *Jobb v. County of Meagher*,

20 M 424, 431, 432, 51 P 1034; *Hogan v. Cascade County*, 36 M 183, 185, 92 P 529.

This section, prior to its amendment, was held not to create a new class of deputies, or lodge in the sheriff exclusively the power of appointment without the consent or approval of the board of county commissioners, but simply to amount to an increase of the maximum number he may appoint, subject to the approval of the board. *Hogan v. Cascade County* 36 M 183, 187, 92 P 529.

References

Cited or applied as section 4597, political code, before amendment, in *Jobb v. County of Meagher*, 20 M 424, 430, 51 P 1034; *Farrell v. Yellowstone County*, 68 M 313, 218 P 559.

4876. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk.

History: En. Sec. 1, Ch. 53, L. 1909; re-en. Sec. 4876, R. C. M. 1921.

4877. Appointment and compensation of chief deputy assessor—other deputy assessors. The assessor in counties of the first class may appoint one chief deputy assessor, in lieu of the regular deputy as now provided by law; and such assessor may also appoint such other deputy assessors for the months of March, April, May, June, July, and August as now provided by law.

History: En. Sec. 2, Ch. 53, L. 1909; re-en. Sec. 4877, R. C. M. 1921.

NOTE.—Reference to salary is omitted from the above section to conform to section 4873.

4878. Extra deputies for county officers. The board of county commissioners in each county is hereby authorized to allow the several county

officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board of county commissioners, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputies appointed in excess of the maximum allowed by law; provided, such salary shall not exceed the maximum salary of deputies provided by law.

History: En. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R. C. M. 1921.

Operation and Effect

Under this section the board of county commissioners has power to fix the sal-

aries of extra deputies or assistant county officers at any rate it may deem proper, provided the rate so fixed does not exceed the rate fixed for regular deputies. *Farrell v. Yellowstone County*, 68 M 313, 314 et seq., 218 P 559.

4879. Qualifications of deputy sheriffs, marshals and policemen. No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six months prior to the date of said appointment; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R. C. M. 1921.

4880. Maximum number of deputy treasurers, assessors, auditors and county attorneys. The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of the second, third and fourth classes, one; in counties of the fifth, sixth, seventh and eighth classes, no deputies must be allowed; provided, that the board of county commissioners may allow such deputies as may be necessary during the months of November and December of each year. In counties of the first, second and third classes, assessors may be allowed one deputy, and during the months of March, April, May, June, July and August, not to exceed two additional deputies at a salary not exceeding one hundred dollars per month; in counties of all other classes assessors may be allowed one deputy during the months of March, April, May, June and July, at a salary not exceeding one hundred dollars per month. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R. C. M. 1921.

NOTE.—The above section is changed in part by sections 4873, 4874, 4877 and 4881 of this code.

References

Cited or applied as section 4602, political code, before amendment, in *Jobb v. County of Meagher*, 20 M 424, 435, 51 P 1034; *Hogan v. Cascade County*, 36 M 183, 187, 92 P 529; *State v. Crouch*, 70 M 551, 553, 554, 227 P 818.

4881. Deputies to county attorneys in first class counties. County attorneys in all counties of the first class shall be allowed to appoint the number of five deputies, one of which shall be the chief deputy.

History: En. Sec. 1, Ch. 8, L. 1915; re-en. Sec. 4881, R. C. M. 1921.

4882. Deputy treasurer in counties of first class. In counties of the first class the treasurer thereof may appoint one chief deputy, at a salary of two thousand dollars per annum; one deputy at a salary of fifteen hundred dollars per annum, and one deputy at a salary of twelve hundred dollars per annum; and said treasurer may also appoint for the months of October, November, December and January two additional deputies at a salary at the rate of one hundred dollars per month.

History: En. Sec. 1, Ch. 97, L. 1905; re-en. Sec. 3129, Rev. C. 1907; re-en. Sec. 4882, R. C. M. 1921.

NOTE.—The foregoing section has been changed in part by sections 4873 and 4874 of this code.

4883. Deputy auditors in counties of first class. In counties of the first class county auditors may appoint not to exceed two deputies.

History: En. Sec. 1, Ch. 88, L. 1905; re-en. Sec. 3130, Rev. C. 1907; re-en. Sec. 4883, R. C. M. 1921.

NOTE.—Part of above section relating to salary is omitted to conform to sections 4873 and 4874.

4884. Mileage of all officers. Members of the legislative assembly, state officers, county officers, township officers, jurors, witnesses, and all other persons, except sheriffs, who may be entitled to mileage shall be entitled to collect mileage at a rate of not to exceed seven cents (7c) per mile for the distance actually traveled, and no more.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933.

county surveyor was not entitled to mileage. *Wade v. Lewis and Clark County*, 24 M 335, 337, 61 P 879. See also *State ex rel. McGrade v. District Court*, 52 M 371, 376, 157 P 1157.

Operation and Effect

Under the law as it stood in 1898, a

4884.1. Same—liability of approving board for exceeding authorized amount—use of railroad when suitable required. Whenever it shall be necessary for any state or county officer to use his own automobile in the performance of any official duty where traveling expense is allowed by law, such officer shall receive not to exceed seven cents (7c) per mile for each mile necessarily traveled unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount. Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933.

4885. Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the

board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses. While in the discharge of his duties, both civil and criminal, except as hereinbefore provided, the sheriff shall receive ten cents per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive ten cents additional per mile, the same to be in full for transporting and dieting of such person during such transportation. The county shall not be liable for nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921.

Operation and Effect

This section was held to be constitutional when applied to officers elected prior to its passage. *Scharrenbroich v. Lewis and Clark County*, 33 M 250, 256, 260, 83 P 482.

A sheriff, constable, or other peace officer, traveling in the discharge of his duties, is entitled to charge only for each mile "actually and necessarily" traveled; and a chief of police is guilty of misconduct in office in claiming and collecting mileage fees for services performed by another officer, he paying to the latter his actual traveling expenses and retaining for himself the balance of the total

amount received. *State ex rel. Wynne v. Examining and Trial Board*, 43 M 389, 399, 117 P 77.

The term "fees," as used in this section, connotes mileage payable to the sheriff by the county in certain cases. *State v. Story*, 53 M 573, 578, 165 P 748.

The provision in this section that the sheriff "while in the discharge of his duties, both civil and criminal," shall receive ten cents per mile actually and necessarily traveled, held not to mean that he may collect that amount per mile in the performance of every duty imposed upon him, but rather that, in the performance of duties for which by other provisions of the law he is authorized to charge mileage, it shall be fixed at ten cents per mile. *Brannin v. Sweet Grass Co.*, 88 M 412, 416, 293 P 970.

4886. Fees for board of prisoners. The fees allowed sheriffs of the several counties of the state for the board of prisoners confined in jail under their charge shall be at the rate of seventy-five cents per day for each of said prisoners, when the number of prisoners shall be twenty or less each day; and when the number of the prisoners per day shall exceed twenty and be less than fifty, then at the rate of sixty cents per day for each of said prisoners in excess of twenty per day and less than fifty per day; and when the number of the prisoners per day shall exceed fifty, then at the rate of fifty cents per day for each of said prisoners in excess of fifty per day.

History: En. Sec. 4605, Pol. C. 1895; re-en. Sec. 3138, Rev. C. 1907; amd. Sec. 1, Ch. 81, L. 1919; re-en. Sec. 4886, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section, designates the recompense payable by the county for boarding prisoners. *State v. Story*, 53 M 573, 578, 165 P 748.

This section, limiting the fees of the sheriff for the board of prisoners to a

certain amount per day for each prisoner, has reference to prisoners confined by state authority and not to federal prisoners. *Majors v. County of Lewis and Clark*, 60 M 608, 616, 201 P 268.

Held, that while the word "board" may include both room rent and meals, as used in this section, fixing the fee allowable to a sheriff for "board of prisoners" confined in the county jail, means food or meals only, since under section 12469, counties must provide for a county

jail with a sufficient number of rooms to accommodate the prisoners confined therein. *Pacific Coal Co. v. Silver Bow County*, 79 M 323, 324 et seq., 256 P 386.

Id. The fee allowed to sheriffs by this section for board of prisoners confined

in the county jail covers the total amount of the county's liability for that purpose; hence a charge for fuel for preparing the food was properly disallowed by the board of county commissioners.

4887. Fees must be paid into county treasury, when. All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in section 9811 of the code of civil procedure; provided, however, that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage while in the performance of official duties, or for the board of prisoners or other persons while in his custody.

History: En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section, imports specific charges to be collected from private individuals for parti-

cular services. *State v. Story*, 53 M 573, 578, 165 P 748.

References

State v. District Court, 62 M 600, 601, 205 P 955; *Crow Creek Irr. Dist. v. Crittenden*, 71 M 66, 68, 227 P 63.

4888. Statement and affidavit of fees collected. The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month, and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making such payment. The affidavit must be in the following form:

State of Montana, }
County of..... } ss.

I, _____, of the county of _____, do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants, for the month of _____, A. D. 19____, and that said fee book shows the full amount received or chargeable in said month, and since my last monthly payment; and neither myself, nor, to my knowledge or belief, any of my deputies or assistants, have rendered any official services, except for the county or state, which is not fully set out in said fee book; and that the foregoing statement thereof is a full, true, and correct copy thereof. Subscribed and sworn to before me this _____ day of _____, 19____.

History: En. Sec. 4607, Pol. C. 1895; re-en. Sec. 3140, Rev. C. 1907; re-en. Sec. 4888, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this sec-

tion, imports specific charges to be collected from private individuals for particular services. *State v. Story*, 53 M 573, 578, 165 P 748.

4889. Treasurer to file affidavits and statements. The treasurer must file and preserve in his office said statements and affidavits, and must issue to the officer one original and one duplicate receipt therefor, and the officer receiving said receipts must preserve one in his office and file the

duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907; re-en. Sec. 4889, R. C. M. 1921.

4890. Payment of salary not to be made until statement and report filed. The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this chapter, and filed the report prescribed in section 4745 of this code.

History: En. Sec. 4609, Pol. C. 1895; re-en. Sec. 3142, Rev. C. 1907; re-en. Sec. 4890, R. C. M. 1921.

4891. Board not to allow compensation of deputies until affidavit filed. The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana, }
County of..... } ss.

I do swear that I have rendered services as deputy for the month of, 19....., and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit, and that I have not paid, deposited, or assigned, nor contracted to pay, deposit, or assign any part of such compensation for the use of any other person, nor in any way, directly or indirectly, paid or given, nor contracted to pay or give, any reward or compensation for my appointment to office, or the emoluments thereof, to my principal or to any other person.

Subscribed and sworn to before me this day of, 19.....

History: En. Sec. 4610, Pol. C. 1895; re-en. Sec. 3143, Rev. C. 1907; re-en. Sec. 4891, R. C. M. 1921.

4892. Fees must be paid in advance. The officers mentioned in this chapter must not, in any case, perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the officers must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

History: En. Sec. 4611, Pol. C. 1895; re-en. Sec. 3144, Rev. C. 1907; re-en. Sec. 4892, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section imports specific charges to be collected from private individuals for par-

ticular services. State v. Story, 53 M 573, 578, 165 P 748.

The provisions of this section are controlled by section 4809, whereby the county clerk may, but is not required to, demand prepayment of filing or other fees. Minneapolis Steel & Machinery Co. v. Thomas, 54 M 132, 135, 163 P 40.

4893. No fees to be charged state, county, or public officer. No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for

official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907; re-en. Sec. 4893, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section imports specific charges to be collected from private individuals for particular services. *State v. Story*, 53 M 573, 578, 165 P 748.

Held that an irrigation district created under chapter 146, laws of 1909, is a public corporation exercising essential governmental functions, one of which is the right to levy taxes, organized for the gov-

ernment of a portion of the state and for the promotion of the public welfare, and as such must be deemed a subdivision of the state within the meaning of this section relieving it, as such subdivision, from the payment of fees for the recordation of papers in the county clerk and recorder's office. *Crow Creek Irr. Dist. v. Crittenden*, 71 M 66, 68, 227 P 63.

References

Thaanum v. Bynum Irrigation District, 72 M 221, 225, 232 P 528; *Buffalo Rapids Irr. Dist. v. Colleran*, 85 M 466, 476, 279 P 369.

4894. Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, a fee of two dollars and fifty cents; and no other fee shall be charged for naturalization papers, or for the record thereof.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921.

4895. Officer must give items and receipt. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the same to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same; and if he refuse or neglect so to do when required, he is liable to the party paying the same in treble the amount so paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907; re-en. Sec. 4895, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this sec-

tion imports specific charges to be collected from private individuals for particular services. *State v. Story*, 53 M 573, 578, 165 P 748.

4896. Must keep statement posted in this office. It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by law; a failure so to do subjects the officer to a fine of one hundred dollars and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907; re-en. Sec. 4896, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this sec-

tion imports specific charges to be collected from private individuals for particular services. *State v. Story*, 53 M 573, 578, 165 P 748.

4897. Officer must not receive any other fees than those named. The officers above named must receive no other fees for any services performed by them in any action or proceeding, or for the performance of any service for which fees are allowed; and in case of any violation of the provisions of this chapter, the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, besides costs of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907; re-en. Sec. 4897, R. C. M. 1921.

Operation and Effect

A civil suit to recover illegal fees, which had been demanded and received

under color of office, can be brought against an officer who has not been convicted in a criminal action. *Ming v. Truett*, 1 M 322, 327.

The term "fees," as used in this section imports specific charges to be collected from private individuals for particular services. *State v. Story*, 53 M 573, 578, 165 P 748.

4898. May demand fees for publication of notice. When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted, before the officer is compelled to make such publication.

History: En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907; re-en. Sec. 4898, R. C. M. 1921.

4899. Meaning of term "folio." The term "folio," when used as a measure for computing fees, means one hundred words, counting every two figures, necessarily used, as a word. Any portion of a folio, when in the whole paper there is not a complete folio, and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

History: En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R. C. M. 1921.

Operation and Effect

The term "fees," as used in this section, refers to costs of publications. *State v. Story*, 53 M 573, 578, 165 P 748.

4900. Mileage—how computed. When any sheriff, constable, or coroner serves more than one process in the same clause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than one mile actually traveled.

History: En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R. C. M. 1921.

4901. Same. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person, under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R. C. M. 1921.

4902. Witnesses on behalf of state or county. The attorney general or any county attorney is authorized to cause subpoenas to be issued, and compel the attendance of witnesses on behalf of the state or county, without paying or tendering fees in advance to either officers or witnesses; and any witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against, and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

History: En. Sec. 4620, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907; re-en. Sec. 4902, R. C. M. 1921.

References

Cited or applied as section 3153, revised codes, in *Griggs v. Glass*, 58 M 476, 479, 193 P 564.

4903. Certificate of clerk to witness. The clerk of any court before which any witness shall have attended on behalf of the state or county, in any civil action, must give to such witness a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the state or county treasurer.

History: En. Sec. 4621, Pol. C. 1895; re-en. Sec. 3154, Rev. C. 1907; re-en. Sec. 4903, R. C. M. 1921.

Operation and Effect

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. *County of Silver Bow v. Davies*, 40 M 418, 425, 107 P 81.

Id. The rule applicable to jurors' certificates applies also to witnesses' certificates; the clerk must observe the same formalities in issuing them.

References

Cited or applied as section 3154, revised codes, in *Griggs v. Glass*, 58 M 476, 480, 193 P 564; *Helena Adjustment Co. v. Claf-lin*, 75 M 317, 326, 243 P 1063.

4904. Preceding sections construed. The provisions of the two preceding sections of this chapter shall extend to all actions and proceedings brought in the name of the attorney general, or any other person or persons, for the benefit of the state or county.

History: En. Sec. 4622, Pol. C. 1895; re-en. Sec. 3155, Rev. C. 1907; re-en. Sec. 4904, R. C. M. 1921.

References

Cited or applied as section 3155, revised codes, in *Griggs v. Glass*, 58 M 476, 480, 193 P 564.

4905. Officers to complete the business of their offices. It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms; and in case any officer, at the close of his term, leaves to his successor official labor to be performed, for which he has received compensation, or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction, upon action brought against him on his official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R. C. M. 1921.

4906. Penalty for false oath. Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in section 10878 of the penal code.

History: En. Sec. 4624, Pol. C. 1895; re-en. Sec. 3157, Rev. C. 1907; re-en. Sec. 4906, R. C. M. 1921.

4907. Penalty for failure to pay over fees. Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is punishable as provided in section 11319 of the penal code.

History: En. Sec. 4625, Pol. C. 1895; re-en. Sec. 3158, Rev. C. 1907; re-en. Sec. 4907, R. C. M. 1921.

4908. Penalty for making false report. Every officer who makes a false report of the fees received by him is guilty of a felony and punishable as provided in section 10724 of the penal code.

History: En. Sec. 4626, Pol. C. 1895; re-en. Sec. 3159, Rev. C. 1907; re-en. Sec. 4908, R. C. M. 1921.

4909. Penalty for sheriff falsely representing his mileage. Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is punishable as provided in sections 10724 and 11334 of the penal code.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R. C. M. 1921.

4910. Sheriff falsely representing his expenses for boarding prisoners. Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is punishable as provided in sections 10724 and 11334 of the penal code.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R. C. M. 1921.

4911. Board of county commissioners to declare office vacant, when. The board of county commissioners, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof, must declare his office vacant and appoint his successor.

History: En. Sec. 4629, Pol. C. 1895; re-en. Sec. 3162, Rev. C. 1907; re-en. Sec. 4911, R. C. M. 1921.

4912. Fees of secretary of state and state auditor. The fees of public officers in the state are as follows, which must be charged and collected for the use of the state and counties, respectively:

Secretary of State.

The fees of the secretary of state are specified in section 145 of these codes.

State Auditor.

For filing and examination of the first application of any insurance company doing business as prescribed in sections 6128 to 6159, and issuing the license thereon, fifty dollars.

For filing each annual statement, as provided in the foregoing chapter, twenty-five dollars.

For each certificate of authority provided in said chapter, two dollars.

For license fee for assessment life insurance companies, as prescribed in section 6303 of the civil code, one hundred dollars.

For filing annual statement, as prescribed in section 6304 of the civil code, twenty-five dollars.

For making the certificate mentioned in section 6301 of the civil code, in addition to the necessary expenses incurred, ten dollars.

For copy of every paper filed or recorded in his office, twenty cents per folio.

For certificate and seal, fifty cents.

For filing any papers not otherwise provided for, twenty-five cents.

History: En. Sec. 4630, Pol. C. 1895; re-en. Sec. 3163, Rev. C. 1907; re-en. Sec. 4912, R. C. M. 1921.

4913. Fees of clerk of supreme court. The fees of the clerk of the supreme court are specified in section 372 of this code, and salary in section 375 of these codes.

History: En. Sec. 4631, Pol. C. 1895; re-en. Sec. 3164, Rev. C. 1907; re-en. Sec. 4913, R. C. M. 1921.

4914. Fees of notaries public. For drawing, copying, and recording each and every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, twenty-five cents.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, unless otherwise prescribed, twenty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar.

For each additional signature, fifty cents.

For administering an oath or affirmation, twenty-five cents.

For certifying an affidavit, with or without seal, including oath, fifty cents.

Provided, the maximum fee that can be computed or charged for drawing, copying, and recording a protest, and for drawing and serving the notices of non-payment or non-acceptance, shall be two dollars and fifty cents.

History: En. Sec. 1, Ch. 44, L. 1907; re-en. Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R. C. M. 1921.

Operation and Effect

A notary public who, in taking depositions, made use of a stenographer employed for that purpose by the party at whose instance they were being taken, and who merely swore the witnesses and

attached his certificate to each deposition, was entitled only to the fees prescribed by statute for attaching his certificate and administering the oaths, and not to the additional sum of twenty cents per folio for transcribing the testimony allowed by this section. *Coleman v. Northern Pacific Ry. Co.*, 41 M 123, 125, 103 P 582.

4915. Fees of commissioner of deeds. The fees of commissioner of deeds are the same as those prescribed for a notary public.

History: En. Sec. 4633, Pol. C. 1895; re-en. Sec. 3166, Rev. C. 1907; re-en. Sec. 4915, R. C. M. 1921.

4916. Fees of sheriff. For the service of summons and complaint on each defendant, one dollar (\$1.00);

For levying and serving each writ of attachment or execution on real or personal property, one dollar (\$1.00);

For service of attachment on the body or order of arrest on each defendant, one dollar (\$1.00);

For the service of affidavit, order, and undertaking in claim and delivery, one dollar (\$1.00);

For serving a subpoena, twenty-five cents (25c) for each witness summoned;

For serving writ of possession or restitution, two dollars (\$2.00);

For trial of the right of property or damages, including all services except mileage, three dollars (\$3.00);

For taking bond or undertaking in any case authorized by law, one dollar (\$1.00);

For serving every notice, rule or order, one dollar (\$1.00), for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty cents (20c) for each folio;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, one dollar (\$1.00);

For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed two dollars and fifty cents (\$2.50) per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad and eight and one-half cents ($8\frac{1}{2}c$) when travel is made other than by railroad, both going and returning, and he shall also be allowed mileage based upon the above rates for each person transported under an order of court, for the actual distance conveyed or transported within the county, the same to be in full payment for transporting and dieting such persons during such transportation.

Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 4885 of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, **notice or paper, when** the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time, but one mileage must be allowed or charged. In the service of subpoenas, but one mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage may be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two or more officers travel in the same automobile in the discharge of any duty but one mileage shall be allowed.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933.

Operation and Effect

The term "fees," as used in this section refers to the sheriff's mileage as well as his other charges. *State v. Story*, 53 M 573, 578, 165 P 748.

Under this section the necessity for the appointment of a keeper of attached property is a question to be determined by the trial court, taking into consideration all facts and circumstances, and on appeal

defendant debtor may not complain for the first time that the appointment was unnecessary and improper and that the expense had been unnecessarily incurred. *Chowning v. Madison Land & Irrigation Co.*, 84 M 494, 499, 276 P 946.

References

Cited or applied as section 4634, political code, before amendment, in *Jurgens v. Hauser*, 19 M 184, 185, 47 P 809; *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879; as section 3167, revised codes, in *Daly v. Kelley*, 57 M 306, 187 P 1022; *Brannin v. Sweet Grass Co.*, 88 M 412, 416, 293 P 970.

4917. Fees of county clerk. For filing and recording each instrument of writing allowed by law to be recorded, except as hereinafter provided, for first folio, thirty cents.

For each subsequent folio or fraction thereof, fifteen cents.

For each entry in index, ten cents.

For certificate that such instrument has been filed and recorded with seal affixed, fifty cents.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, fifteen cents.

For abstract of title, when required made from original records and files, for each conveyance, incumbrance, or other instrument affecting title, fifty cents.

For a copy of any record or paper, for each folio, fifteen cents; provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison and certification of such copy, other than the fee of fifty cents for his certificate and seal.

For filing and recording each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including indexes, two dollars.

For filing and indexing each chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, fifty cents.

For recording and platting each town site or map, for each lot up to and including one hundred, twenty-five cents.

For each additional lot in excess of one hundred, five cents.

For recording the field notes of survey of any town site, per folio, twenty-five cents.

For filing, recording, and indexing each affidavit of annual labor on mining claim, for each claim named therein, one dollar.

For filing and indexing each certificate of incorporation or annual statement of any corporation, one dollar.

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original instrument, and noting same in index, twenty-five cents.

For administering an oath with certificate and seal, except in application for pension, or in pension certificates, for which no charge shall be made, fifty cents.

For taking and certifying an acknowledgment, with seal affixed for each signature thereto, fifty cents.

For filing and indexing each affidavit for renewal of chattel mortgage, fifty cents.

For filing and indexing each affidavit of butcher of brands of cattle slaughtered, fifty cents.

For recording and indexing transcripts in estray and lost property cases, one dollar.

For recording and indexing any land office register's final certificate, fifty cents.

For recording and indexing a real estate mortgage, short form, one dollar and fifty cents.

For recording and indexing a real estate mortgage, long form, two dollars; except when such mortgage exceeds ten folios, in which case, for every folio over ten, an additional twenty cents.

For recording and indexing quitclaim deed, short form, one dollar.

For recording and indexing warranty deed, short form, one dollar and fifty cents.

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. C. M. 1921.

4918. Fees of clerk of district court. At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of five dollars, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of five dollars;

And the defendant, on his appearance, must pay the sum of two dollars and fifty cents (which includes all the fees to be paid up to the entry of judgment).

On the entry of judgment in favor of plaintiff, he must pay the additional sum of two dollars and fifty cents;

And if in favor of defendant, the defendant must pay the sum of five dollars (which includes all the clerk's costs for all services rendered in any action or proceeding, except issuing execution or order of sale, and the fees for transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment).

For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of five dollars (which includes all costs up to the entry of judgment).

For entry of judgment in favor of party appealing, he must pay the sum of two dollars and fifty cents.

For entry of judgment in favor of the other party, or respondent, he must pay the sum of five dollars (which includes all the clerk's costs for all services rendered on such appeal).

For certifying transcripts on appeal, where the same are not prepared by him, five dollars, and in addition thereto, five cents per page for each page in excess of two hundred pages.

And where he prepares such transcript, in addition thereto, per folio, fifteen cents.

For preparing copies of papers in his office, per folio, fifteen cents, when certified to, in addition thereto, fifty cents for certificate and seal.

For certificate with seal, fifty cents.

For oath and jurat, with seal, fifty cents.

For administering oath, twenty-five cents.

For taking depositions, per folio, twenty cents.

For filing and docketing transcript of judgment from all other courts and issuing execution thereon, two dollars and fifty cents.

For issuing execution and all services connected therewith, one dollar.

For issuing execution or order of sale on foreclosure of liens, one dollar.

And in addition per folio, twenty cents.

For searching records of files for each year, except for suitors or their attorneys, twenty-five cents.

For transmission of records or files or transfer of cases to other courts, two dollars and fifty cents.

For filing and entering papers on transfer from other courts, five dollars.

For making, acknowledging, and procuring the signature of judge to deed of lot in town site, four dollars.

For issuing a marriage license, two dollars.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917; re-en. Sec. 4918, R. C. M. 1921.

Operation and Effect

As this section makes no provision for the collection of a fee for making a transcript in special proceedings, such a fee is not a necessary disbursement, and the clerk is not authorized to collect the same. State ex rel. Baker v. Second Judicial District Court, 24 M 425, 427, 62 P 688; State ex rel. Healy v. District Court, 26 M 224, 226, 68 P 470.

Transcripts on appeal may be prepared by the parties or their counsel, but the authentication must be made by the clerk, after comparison of them with the original files, by his certificate under the seal of the district court. Shadville v. Barker, 26 M 45, 49, 66 P 496, 761.

References

Cited and applied as section 4636, political code, before amendment, in Montana etc. Co. v. Boston etc. Min. Co., 33 M 400, 403, 84 P 706.

4919. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, of administration, or guardianship, the clerk must collect from the petitioner the sum of five dollars.

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of five dollars.

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of five dollars.

And on the entry of judgment thereon, the prevailing party must pay the sum of two dollars and fifty cents.

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of five dollars.

On entry of judgment thereon, the prevailing party must pay the sum of two dollars and fifty cents.

History: En. Sec. 4637, Pol. C. 1895; re-en. Sec. 3170, Rev. C. 1907; re-en. Sec. 4919, R. C. M. 1921.

NOTE.—So much of the above section as was declared unconstitutional has been omitted from this code. See *Hauser v. Miller*, 37 M 22, 94 P 197.

References

Cited or applied as section 4637, political code, in *Hauser v. Miller*, 37 M 22, 23, 94 P 197.

4920. Fees of county treasurer for tax deed. The county treasurer shall receive, for making and acknowledging a deed for property sold for delinquent taxes, the sum of three dollars.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907; re-en. Sec. 4920, R. C. M. 1921.

4921. Fees of county surveyor. The county surveyor is entitled to receive and collect for his own use the following fees:

For services in making a survey required by any court, or upon the application of any person, the sum of seven dollars per day, to be paid by the person making the application, and if made for the county by order of the board of county commissioners, to be paid out of the contingent fund.

For copies and certificates, per folio, twenty cents.

For copy of any plat of survey, two dollars.

Expenses of chainmen and markers, if furnished by surveyor, not to exceed per day, three dollars (or as agreed upon).

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R. C. M. 1921.

References

Cited or applied as section 4639, political code, in *Wight v. Board of Commrs. of Meagher County*, 16 M 479, 483, 41 P 271; *State ex rel. Donyes v. Board of County Commrs. of Granite County*, 23 M 250, 253, 58 P 439; as section 3172, revised codes, in *State ex rel. Payne v. District Court*, 53 M 350, 353, 165 P 294; *Hicks v. Stillwater County*, 84 M 38, 47, 274 P 296; *Durland v. Prickett et al.*, 98 M 399, 39 P 2d 652.

Operation and Effect

The term "fees," as used in this section, refers to the per diem of the county surveyor, to his charges for copies, etc., and to his expenses for chainmen and markers, whether chargeable to the county or to private individuals. *State v. Story*, 53 M 573, 578, 165 P 748.

4922. Fees of coroner. The coroner is entitled to receive and collect for his own use the following fees:

For each day engaged in holding an inquest, five dollars, provided, that when two or more inquests are held on the same day a fee for only one day shall be charged;

For subpoenaing each witness, including copy of subpoena, thirty cents;

For summoning each juror, including copy of summons, thirty cents;

For each oath administered, five cents;

For making transcript of testimony, per folio, fifteen cents;

For each mile actually traveled in the performance of any duty, seven cents;

For filing papers, each, five cents;

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars in any one year, including compensation paid all clerks, stenographers and other clerical assistants employed by him, provided the

coroner in a county having a population of 50,000 or more shall receive a salary of \$3300 per year and mileage as above provided and all clerical and stenographic help shall be included in such salary. Said population to be based on the United States census of 1930.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1933.

charges of the coroner which are payable by the county. State v. Story, 53 M 573, 578, 165 P 748.

References

Operation and Effect

The word "fees," as used in this section, refers to the per diem and other

Cited or applied as section 3173, revised codes, in State ex rel. Payne v. District Court, 53 M 350, 353, 165 P 294.

4923. Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed executors and administrators, as provided in section 10287 of the code of civil procedure.

History: En. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R. C. M. 1921.

4924. Fees of justices of the peace in civil actions. The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court:

Two dollars and fifty cents when summons is issued, to be paid by the plaintiff.

Two dollars and fifty cents when issue is joined, to be paid by the defendant.

Two dollars and fifty cents of the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the two dollars and fifty cents for the issuance of summons shall be made for any services, including issuing and return of execution.

Two dollars and fifty cents for all services in an action where judgment is rendered by confession.

Two dollars and fifty cents for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R. C. M. 1921.

4925. Fees, when payable. All fees must be paid in advance, and no costs shall be included in any judgment until they have been paid; provided, however, that nothing herein contained shall restrict or prevent the bringing of suits in forma pauperis as provided by law.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 2, Ch. 55, L. 1921; re-en. Sec. 4925, R. C. M. 1921.

4926. Fees of justices of the peace in criminal actions. The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered as a committing magistrate where examination is waived, two dollars and fifty cents.

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, five dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, two dollars and fifty cents.

For all services rendered where there is a plea of guilty, two dollars and fifty cents.

For all services rendered where there is a trial, five dollars.

For taking, filing, and approving bail bond, including justification, one dollar.

For transmitting papers on appeal, and certificate, including bond and approval, one dollar and fifty cents.

For all services in issuing a search-warrant, to be paid by the person demanding same, one dollar.

The total amount of fees allowed by the board of county commissioners to any one justice of the peace in criminal cases must not exceed five hundred dollars in any one year.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 3, Ch. 55, L. 1921; re-en. Sec. 4926, R. C. M. 1921.

4927. Miscellaneous fees. The following miscellaneous fees shall also be collected by justices of the peace, to-wit:

For copies of papers on file or docket, per folio, twenty cents.

For taking the acknowledgment of an instrument, for the first name, one dollar.

For each additional name, fifty cents.

For administering oath and jurat, fifty cents.

For all services relating to lost or unclaimed property, as provided by sections 7694 to 7696 of the civil code, two dollars.

For performing the marriage ceremony and returning certificate to clerk of the district court, five dollars.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176 Rev. C. 1907; superseded by Sec. 4, Ch. 55, L. 1921; re-en. Sec. 4927, R. C. M. 1921.

4928. Justices may retain fees, when. Justices of the peace shall retain as their compensation the fees herein provided for, save and except in those townships where a stated salary is provided by law to be paid to justices of the peace; provided, however, that in all cases justices of the peace may retain the miscellaneous fees provided for in the preceding section.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 5, Ch. 55, L. 1921; re-en. Sec. 4928, R. C. M. 1921.

4929. Salaries of justices of the peace in certain townships—office hours—quarters. Justices of the peace in townships having a population of ten thousand people and not exceeding twenty thousand people shall each receive a salary of fifteen hundred dollars per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than twenty thousand people shall each

receive a salary of twenty-four hundred dollars, payable monthly from the county treasury; and justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 4927 of this code; justices of the peace in townships having a population of less than ten thousand people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand people and upwards shall keep their offices open for business from nine o'clock a. m. to twelve o'clock noon, and from one o'clock p. m. to five o'clock p. m. on all judicial days, and at such other hours on judicial days as they may desire; and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion select suitable quarters for such justices, and may, in its discretion, pay for same from moneys in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921.

4930. Collection and disposition of fees in townships of ten thousand and upwards—itemized statement. Justices of the peace in townships having a population of ten thousand people and upwards shall collect the fees prescribed by law for justices of the peace, except the fees in criminal actions other than for the issuance of search warrants, and shall pay the same into the county treasury of the county wherein they hold such office, on the first day of each month, to be credited to the contingent fund of such county; and shall also file therewith an itemized statement showing all fees received during the preceding month in connection with his office; said statement shall also state that all fees required by law to be paid in connection with matters pending before him as such justice during the preceding month have been paid to him, and by him paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 4927, supra.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R. C. M. 1921.

4931. Penalty for violation of law. Any justice of the peace violating any of the provisions of this act shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months in the county jail, or both. He shall also be deemed guilty of malfeasance in office, and, in the discretion of the court, may be removed from office, in which latter case he shall thereafter be disqualified from holding such office.

History: En. Sec. 3, Ch. 84, L. 1917; re-en. Sec. 4931, R. C. M. 1921.

4932. Fees of constable. For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search-warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expense incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars (\$500.00) in any one year. The excess must be paid into the contingent fund of the county treasury.

That constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of \$900.00 per annum, payable monthly from the county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of \$1,500.00 per annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people shall receive no other fees for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer.

History: En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907; re-en. Sec. 4932, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1935.

Operation and Effect

The word "fees," as used in this section, refers to the charges of the constable, whether collectible from the county in

criminal cases or from individuals in civil actions; it also refers to mileage as among the "fees" of the constable. *State v. Story*, 53 M 573, 578, 165 P 748.

References

Cited or applied as section 4643, political code, in *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879.

4933. Jurors' fees. Grand and trial jurors shall receive four dollars per day for attendance before any court of record, and seven cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1935.

References

Cited or applied as section 4644, political code, before amendment, in *Wade v. Lewis and Clark County*, 24 M 335, 338, 61 P 879.

4934. Same—for what time paid. A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must be paid for all Sundays and legal holidays unless he resides within ten miles from the courthouse, and all jurors residing within ten miles from the courthouse at which he is summoned to appear shall receive no compensation for Sundays or legal holidays, or for any days he may have been absent or excused from attending the court.

History: En. Sec. 2, p. 48, L. 1903; re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1913; re-en. Sec. 4934, R. C. M. 1921.

4935. Compensation of jurors in court not of record and at coroner's inquests. Jurors in courts not of record, in both civil and criminal actions, shall receive one dollar and fifty cents per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of one dollar and fifty cents per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921.

Operation and Effect

Jurors in courts not of record are not allowed to receive mileage. *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879.

4936. Witnesses' fees. For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, three dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, seven cents; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1935.

Operation and Effect

A party to whom costs are awarded is entitled to mileage of witnesses who appeared and testified, although the record does not show that they were subpoenaed. *McGlaulin v. Wormser*, 28 M 177, 182, 72 P 428. See also *Lynes v. Northern Pac. Ry. Co.*, 43 M 317, 330, 117 P 81.

Although witnesses are not obliged to appear at a trial held out of the county in which they reside unless the distance is less than thirty miles, if such witnesses do appear, and the court finds that their testimony was necessary, they are entitled to mileage the same as witnesses who attend in the usual way. *McGlaulin v. Wormser*, 28 M 177, 182, 72 P 428; *Great Falls Meat Co. v. Jenkins*, 33 M 417, 422, 84 P 74. See also *Lynes v. Northern Pac. Ry. Co.*, 43 M 317, 330, 117 P 81.

The mileage of witnesses which a successful party to an action may recover, under this section and section 9802, is not limited to travel from and to their place of residence; whether the mileage shall be computed from the place of residence will depend upon the circumstances of each case. *Lynes v. Northern Pac. Ry. Co.*, 43 M 317, 330, 117 P 81.

The mileage of witnesses in civil actions allowed litigants under this section is limited to travel within the state. *Chilcott v. Rea*, 52 M 134, 141, 155 P 1114.

4937. Duties of clerk as to jurors. The clerk must give to each juror, at the time he is excused from further service, a certificate taken from a book containing a stub with a like designation, signed by himself under seal, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund, and the clerk must make a detailed statement containing a list of the jurors, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid the clerk until such

The word "fees" refers to the per diem and mileage of witnesses. *State v. Story*, 53 M 573, 578, 165 P 748.

A material witness who resided outside the county in which the case was tried at a distance greater than thirty miles and voluntarily attended the trial at the request of the prevailing party, and who after his arrival on the day set for trial had to wait for about a week before he was required to testify on account of congestion of court business, was entitled to per diem for the whole time he was in attendance and not only for the day on which he gave his testimony, as well as to mileage, the service of a subpoena not being a prerequisite to their allowance. *Helena Adjustment Co. v. Claflin*, 75 M 317, 326, 243 P 1063.

An attorney, nonresident of Montana at the time he was subpoenaed as a witness for plaintiff in a suit to set aside a fraudulent default judgment, who had acted as plaintiff's counsel in the action out of which the equitable suit arose but was not representing him therein, held properly entitled to mileage from the state line to the place of trial and return, under this section. *Bullard v. Zimmerman et al.*, 88 M 271, 281, 292 P 730.

References

Cited or applied as section 4648, political code, in *Wade v. Lewis and Clark County*, 24 M 335, 339, 61 P 879; as section 3182, revised codes, in *Neary v. Northern Pac. Ry. Co.*, 41 M 480, 507, 110 P 266.

statement is filed. The board must examine such statement and see that it is correct. The clerk must keep a record of the attendance of jurors and compute the amount due for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R. C. M. 1921.

Operation and Effect

This section is mandatory, both as to the duty of the clerk and of the treasurer; for the word "must" indicates that the duty of the clerk becomes imperative as soon as a juror is entitled to his pay. It also indicates that the duty of the treasurer is imperative as soon as a certificate, properly issued by the district court clerk, is presented to him. In re Farrell, 36 M 254, 261, 92 P 785. See County of Silver Bow v. Davies, 40 M 418, 426, 107 P 81.

A juror's certificate, which does not bear the seal required by this section, is void, and therefore not a subject of forgery. In re Farrell, 36 M 254, 266, 92 P 785. See also County of Silver Bow v. Davies, 40 M 418, 425, 107 P 81, and American Bonding Co. v. State Sav. Bank, 47 M 332, 337, 133 P 367; compare Choate v. Spencer, 13 M 127, 132, 32 P 651; Sharman v. Huot, 20 M 555, 557, 52 P 558; Kipp v. Burton, 29 M 96, 103, 74 P 85.

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. County of Silver Bow v. Davies, 40 M 418, 425, 107 P 81.

4938. Duties of clerk in reference to witnesses' certificate. The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena, and at the time any witness is excused from further attendance the clerk must give to each witness a certificate taken from a book, containing a stub with like designations signed by the clerk, under seal, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

History: En. Sec. 4649, Pol. C. 1895; re-en. Sec. 3183, Rev. C. 1907; re-en. Sec. 4938, R. C. M. 1921.

Operation and Effect

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. County of Silver Bow v. Davies, 40 M 418, 425, 107 P 81.

Id. The clerk must observe the same formalities in issuing jurors' certificates as in issuing witnesses' certificates.

References

Cited or applied as section 3183, revised codes, in Griggs v. Glass, 53 M 476, 480, 193 P 564.

4939. Statement of clerk to be sent to board of county commissioners. The clerk must make a detailed statement containing a list of the witnesses, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

History: En. Sec. 4650, Pol. C. 1895; re-en. Sec. 3184, Rev. C. 1907; re-en. Sec. 4939, R. C. M. 1921.

Operation and Effect

The word "fees" refers to the per diem and mileage of witnesses. State v. Story, 53 M 573, 578, 165 P 748.

4940. Clerk must keep a record of witnesses in criminal actions. The clerk must keep a record of the attendance of witnesses in criminal cases, and compute the amount due them for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

History: En. Sec. 4651, Pol. C. 1895; re-en. Sec. 3185, Rev. C. 1907; re-en. Sec. 4940, R. C. M. 1921.

that a witness will be allowed mileage only for the shortest route, although it may appear that such is not the most convenient route. *State ex rel. McMillan v. Ramsey*, 11 M 245, 246, 28 P 258.

Operation and Effect

Under a former statute it was held

4941. Witnesses in courts not of record. Witnesses in courts not of record in civil actions and proceedings shall receive one dollar and fifty cents for each day's actual attendance, and seven cents for each mile actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1935.

4942. Witnesses in criminal actions or coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive one dollar and fifty cents per day for actual attendance, and seven cents per mile for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R. C. M. 1921; amd. Sec. 4, Ch. 18, L. 1935.

4943. In civil actions must be paid by party subpoenaing. The fees and compensation of a witness in all civil actions must be paid by the party who caused him to be subpoenaed.

History: En. Sec. 4654, Pol. C. 1895; re-en. Sec. 3188, Rev. C. 1907; re-en. Sec. 4943, R. C. M. 1921.

4944. Witness may demand advance payment of fees in civil action. No witness shall be obliged to attend court, or before a referee, or any officer authorized to take depositions, or commissioner, when subpoenaed, unless his mileage and fees for one day's attendance are tendered or paid to him on his demanding the same, nor unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

History: En. Sec. 4655, Pol. C. 1895; re-en. Sec. 3189, Rev. C. 1907; re-en. Sec. 4944, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1927.

4945. Criminal actions not more than six to be subpoenaed without order of court. In criminal actions in a court of record, the clerk of the court must not issue a subpoena on behalf of the state or defendant for more than six witnesses, except upon the order of the court or judge, and such order may be made upon proper showing by affidavit or otherwise.

History: En. Sec. 4656, Pol. C. 1895; re-en. Sec. 3190, Rev. C. 1907; re-en. Sec. 4945, R. C. M. 1921.

defendant, upon request for a subpoena for additional witnesses, to disclose the materiality of their testimony. *State v. O'Brien*, 18 M 1, 12, 43 P 1091, 44 P 399.

Operation and Effect

It is proper for the court to require the

4946. Interpreters to be paid as witnesses. Interpreters and translators must receive the same fees as witnesses.

History: En. Sec. 4657, Pol. C. 1895; re-en. Sec. 3191, Rev. C. 1907; re-en. Sec. 4946, R. C. M. 1921.

4947. Expert witnesses. An expert is a witness and receives the same compensation as a witness.

History: En. Sec. 4658, Pol. C. 1895; re-en. Sec. 3192, Rev. C. 1907; re-en. Sec. 4947, R. C. M. 1921.

4948. County superintendent's traveling expenses. Each county superintendent of schools shall be paid all necessary traveling expenses actually incurred in the discharge of his or her duties.

History: En. Sec. 3195, Rev. C. 1907; amd. Sec. 3, Ch. 110, L. 1917; re-en. Sec. 4948, R. C. M. 1921.

4949. County commissioners to audit claims. The boards of county commissioners of the several counties of the state are hereby authorized and directed to audit and allow such traveling expenses of the superintendent of schools of the respective counties, quarterly, and the same shall be paid out of the general fund of such county.

History: En. Sec. 2, Ch. 27, L. 1907; Sec. 3196, Rev. C. 1907; re-en. Sec. 4949, R. C. M. 1921.

4950. Limitation of chapter. The salary or emoluments of any officer appointed or elected prior to the time of the adoption of this code are not affected by the provisions of this chapter.

History: En. Sec. 4661, Pol. C. 1895; re-en. Sec. 3197, Rev. C. 1907; re-en. Sec. 4950, R. C. M. 1921.

CHAPTER 373

OTHER COUNTY CHARGES

- Section 4951. County charges to be audited.
4952. Enumeration of county charges.
4953. Costs on removal of criminal actions.
4954. Proceedings in collection of such costs.

4951. County charges to be audited. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as prescribed in sections 4465.10 and 4465.11 and in section 4605.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907; re-en. Sec. 4951, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1935. Cal. Pol. C. Sec. 4343.

4952. Enumeration of county charges. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title.

2. One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.

3. The salary and actual expenses for traveling when on official duty, and for the board of prisoners allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

5. The accounts of the coroner of the county for such services as are provided by law.

6. All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

7. The necessary expenses incurred in the support of county hospitals and poor-farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

8. The contingent expenses necessarily incurred for the use and benefit of the county.

9. Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R. C. M. 1921. Cal. Pol. C. Sec. 4344.

Operation and Effect

This section restricts the liability of the county to such expenses as may be incurred under statutory authority directly conferred or necessarily implied from the powers granted to the county. *Sears v. Galatin County*, 20 M 462, 465, 52 P 204.

Expenses, not imposed by law, are not a charge against a county. *Wade v. Lewis and Clark County*, 24 M 335, 340, 61 P 879.

Under subdivision 3, all expenses necessarily incurred by a county attorney in prosecutions for public offenses arising in the county are a county charge. *Ind. Pub. Co. v. Lewis and Clark County*, 30 M 83, 85, 75 P 860.

A county attorney of a county of the third class had power to bind the county for services of a stenographer employed by the day if such services were necessary to the proper discharge of the duties of his office; and in the absence of a showing that they were unnecessary, the district court properly directed the board

of county commissioners to pay the claim, under this section, providing that contingent expenses necessarily incurred for the use and benefit of the county are county charges. In *re Hyde*, 73 M 363, 366, 236 P 248.

Id. That which the law does not impose as an expense upon a county is not properly chargeable to it.

Where a sheriff predicated his demand for reimbursement for expenses incurred by him for services performed beyond the state line upon his legal rights incident to his position as sheriff, and not upon a contract of employment by the county attorney at which direction he acted, and he did not show that he first obtained the consent of the board of county commissioners to absent himself from the state (sec. 4739), he was not entitled to recover on the theory that the claim was allowable under authority of subdivision 2, this section, making the county chargeable with expenses necessarily incurred by the county attorney in criminal cases arising within the county. *Brannin v. Sweet Grass Co.*, 88 M 412, 419, 293 P 970.

4953. Costs on removal of criminal actions. When a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found or information filed.

History: En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907; re-en. Sec. 4953, R. C. M. 1921. Cal. Pol. C. Sec. 4345.

Operation and Effect

Where a criminal action is removed from one county to another for trial, it is the duty of the county to which it is transferred to furnish a prosecuting offi-

cer, and if for any reason its county attorney is unable to act as such officer, and the court appoints special counsel to represent the state, the cost incident to his employment is not a proper charge against the county from which the change of venue was had. *State ex rel. Cascade Co. v. Lewis and Clark County*, 34 M 351, 355, 86 P 419.

4954. Proceedings in collection of such costs. The district court of the county to which such action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of their county, and such board of county commissioners shall audit the same and draw their warrants therefor upon the treasurer of the county from which such action was removed, and such board of county commissioners shall forward to said treasurer and board of county commissioners of the county from which said action was transferred, as aforesaid, a certified copy of the total amount allowed by the court, giving each item

as certified to them by the clerk of the district court and the court; and the board of county commissioners receiving such certified copy of said costs allowed shall enter the same in their books as a charge against the treasurer of their county, and the county treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the general fund of said county; or if, at the time of presentation, there is not sufficient moneys in the said general fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of county commissioners of the county where the indictment was found or information filed.

History: En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907; re-en. Sec. 4954, R. C. M. 1921. Cal. Pol. C. Sec. 4346.

Operation and Effect

The mere certification of the costs resulting from the removal of a cause for trial from one county to another, required

under this section, may not be said to have the force and effect of a judgment against the county from which the cause was removed, where no action was pending to which it was a party. *State v. Lewis and Clark County*, 34 M 351, 356, 86 P 419.

CHAPTER 374

COUNTY MANAGER FORM OF GOVERNMENT

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| Section | 4954.1. County manager plan of government may be adopted. |
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| | 4954.23. The recall of county commissioners. |

4954.1. County manager plan of government may be adopted. Any county in the state is hereby authorized to adopt a county manager form of government as herein defined, and in accordance with the procedure herein specified.

History: En. Sec. 1, Ch. 109, L. 1931.

4954.2. Method of adoption. (a) Upon a petition filed with the board of county commissioners signed by not less than 20 per cent. of the whole number of voters who voted at the last general election asking that a referendum be held on the question of adopting the county manager form of government, it shall be the duty of the board of county commissioners to

submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety days nor less than sixty days from the filing of the petition, but not within thirty days of any general election. The question submitted shall be worded: "Shall the county manager form of government be adopted in.....county?"

(b) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four consecutive weeks.

(c) If a majority of the votes cast on the question at the election shall be in favor of the county manager form of government it shall go into effect at a date designated in the petition or resolution. Provided: That no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but that from and after the establishment of such form of government, his duties shall be such duties as are assigned to him by the county manager.

History: En. Sec. 2, Ch. 109, L. 1931; amd. Sec. 1, Ch. 56, L. 1933.

4954.3. Powers vested in board of county commissioners. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

History: En. Sec. 3, Ch. 109, L. 1931.

4954.4. Powers and duties of the county board. (a) The board of county commissioners (hereinafter called the county board) shall be the policy-determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds.

(b) The county board is vested with full power to inquire into the official conduct of any officer or office under its control and to investigate the accounts, disbursements, bills and receipts of any county, district or township officer, and for these purposes may subpoena witnesses, administer oaths and require the production of books, papers and other evidence; and in case any witness fails or refuses to obey any such lawful order of the county board, he shall be deemed guilty of a misdemeanor.

(c) The county board shall have power to preserve order in its sessions and for this purpose may enforce obedience by fines not exceeding five dollars, or by imprisonment in the county jail for a period not exceeding twenty-four hours.

(d) The county board shall have power to put all officers of the county on a salary basis, and to require all fees to be accounted for and paid into the county treasury.

(e) Whenever in any county adopting this act it is not clear what officer provided for thereby or under the authority thereof should exercise any power or perform any duty conferred upon or required of the county, or any officer thereof, by general law, then any such power shall be exer-

cised or duty performed by that officer of the county designated by ordinance or resolution of the county board.

History: En. Sec. 4, Ch. 109, L. 1931.

4954.5. County board not to interfere in appointments or removals.

Neither the county board nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office by the county manager or any of his subordinates, or in any manner take part in the appointment or removal of officers or employees in the administrative service of the county. Except for the purpose of inquiry or in emergencies, the county board and its members shall deal with that portion of the administrative service over which the manager is responsible solely through the manager, and neither the county board nor any member thereof shall give orders to any subordinate of the county either publicly or privately. Any violation of the provisions of this section by a member of the county board shall be a misdemeanor, conviction of which shall immediately result in the forfeiture of his office by the member so convicted.

History: En. Sec. 5, Ch. 109, L. 1931.

4954.6. Appointment of manager. (a) The county board shall appoint a county manager and fix his compensation. He shall be the administrative head of the county government, and shall devote his full time to this work. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. No member of the county board shall, during the time for which elected, be chosen manager, nor shall the managerial powers be given to a person who at the same time is filling an elective office.

(b) The manager shall not be appointed for a definite tenure, but shall be removable at the pleasure of the county board. In case the county board determines to remove the manager, he shall be given, if he so demands, a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the county board prior to the date on which his final removal shall take effect, but pending and during such hearing the county board may suspend him from office, provided that the period of suspension shall be limited to thirty days. The action of the board in suspending or removing the manager shall not be subject to review. In case of the absence or disability of the manager the county board may designate some responsible person to perform the duties of the office.

History: En. Sec. 6, Ch. 109, L. 1931.

4954.7. Appointment of subordinates. The manager shall be responsible to the county board for the proper administration of all the affairs of the county which the board has authority to control. To that end he shall appoint all officers and employees in the administrative service of the county, except as otherwise provided in this act, and except as he may authorize the head of a department or office responsible to him to appoint subordinates in such department or office. All appointments shall be on the basis of the ability, training and experience of the appointees which

fit them for the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days.

History: En. Sec. 7, Ch. 109, L. 1931.

4954.8. Civil service provisions not affected by. Nothing in this act shall be construed to repeal or counteract existing civil service provisions of the state law.

History: En. Sec. 8, Ch. 109, L. 1931.

4954.9. Removal of officers or employees. Any officer or employee of the county appointed by the manager, or upon his authorization, may be laid off, suspended or removed from office or employment either by the manager, or the officer by whom appointed. Any director of a department or other officer who has been suspended or removed by the manager, within five days thereafter shall be given a written statement setting forth the reasons for dismissal, if he so requests. A copy of the written statement giving reasons for dismissal, a copy of the written reply thereto by the officer involved, and a copy of the decision of the manager shall be filed as a public record in the office of the clerk to the county board.

History: En. Sec. 9, Ch. 109, L. 1931.

4954.10. Right to attend county board meetings. The manager, the directors of all departments, and all other officers of the county shall be entitled to be present at all sessions of the county board. The manager shall have the right to present his views on all matters coming before the county board and the directors and other officers shall be entitled to present their views relating to their respective departments or offices. This right shall apply to all officers of the county whether elective or appointive.

History: En. Sec. 10, Ch. 109, L. 1931.

4954.11. Powers and duties of the county manager. (a) As the administrative head of the county government for the county board, the manager shall supervise the collection of all revenues, guard adequately all expenditures, secure proper accounting for all funds, look after the physical property of the county, exercise general supervision over all county institutions and agencies, and, with the approval of the county board, coordinate the various activities of the county and unify the management of its affairs.

(b) He shall execute and enforce all resolutions and orders of the county board, and see that all laws of the state required to be enforced through the county board or other county officers subject to its control are faithfully executed.

(c) He shall attend all meetings of the county board and recommend such actions as he may deem expedient.

(d) He shall appoint all officers and employees in the administrative service of the county, except as otherwise provided in this act and except as he may delegate that power.

(e) He shall fix, with the approval of the county board, the compensation of all officers and employees whom he or a subordinate appoints.

(f) He may remove such officers, agents, and employees as he may appoint, and he shall report every appointment or removal to the next meeting of the county board.

(g) He shall prepare and submit the annual budget, and execute the budget in accordance with the resolutions and appropriations made by the county board.

(h) He shall make regular monthly reports to the county board in regard to matters of administration, and keep the board fully advised as to the financial condition of the county.

(i) He shall examine regularly the books and papers of every officer and department of the county and report to the county board the condition in which he finds them. He may order an audit of any office at any time.

(j) He shall perform such other duties as may be required of him by the county board.

History: En. Sec. 11, Ch. 109, L. 1931.

4954.12. Administrative activities. (a) The county manager shall be responsible to the county board for the administration of the following activities, unless otherwise authorized by the county board or directed by laws:

1. The assessment of property for taxation and the preparation of the tax roll;

2. The collection of taxes, license fees, and other revenues of the county and its subdivisions;

3. The custody and accounting of all public funds belonging to or handled by the county;

4. The purchase of all supplies for the county except those specifically excepted in this act;

5. The care of all county buildings;

6. The care and custody of all the personal property of the county;

7. The recording of deeds, mortgages and other instruments, and the entry and preservation of such other public records as the law requires;

8. The construction and maintenance of county highways and bridges;

9. The employment of prisoners;

10. The care of the poor; the operation of county charitable and correctional institutions, and the other welfare activities;

11. Public health work and the operation of the county hospitals;

12. Any or all matters of property and business in connection with the administration of schools and other governmental units within the county which shall be delegated to him by these units with the approval of the county board;

13. Such other activities of the county as are not specifically assigned to some other officers or agency by this act or by laws of the state subsequently enacted.

(b) These activities shall be distributed among the departments hereinafter described. There shall be a department of finance; a department of public works; a department of public welfare; and the county board may, upon recommendation of the county manager, establish additional de-

partments. Any activity which is unassigned by this act shall be assigned by the county board to an appropriate department, and any activity so assigned may, upon the recommendation of the county manager, be transferred by the board to another department.

(c) The manager shall appoint a director for each department provided for or authorized by this section, and he may, with the consent of the county board, act as the director of one or more departments himself, or appoint one director for two or more departments. The subordinate officers and employees of each department shall be appointed or employed by the manager, unless he chooses to delegate this power in particular instances to a subordinate officer.

History: En. Sec. 12, Ch. 109, L. 1931; amd. Sec. 2, Ch. 56, L. 1933.

4954.13. Compensation established by county board. The county board shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. Such schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the laws of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

History: En. Sec. 13, Ch. 109, L. 1931; amd. Sec. 3, Ch. 56, L. 1933.

4954.14. Advisory boards. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation and it shall be their duty to consult and advise with the officer in charge of the office or department for which they are appointed but not to direct the conduct of such department or office.

History: En. Sec. 14, Ch. 109, L. 1931.

4954.15. Preparation and submission of the budget. On or before the 20th day of July of each year the manager shall prepare and submit to the county board a budget presenting a financial plan for conducting the affairs of the county for the ensuing year. The budget shall be set up in the manner prescribed by general statute and shall be published prior to the date of adoption by the county board.

History: En. Sec. 15, Ch. 109, L. 1931.

4954.16. Department of finance. (a) The director of finance shall have charge of the administration of the financial affairs of the county, including the budget; the assessment of property for taxation; the collection of taxes, license fees, and other revenues; the custody of all public funds belonging to or handled by the county; control over the expenditures of the county and its subdivisions; the disbursement of county funds; the purchase, storage and distribution of all supplies, materials, equipment, and contractual services needed by any department, office, or other using agency of the county; the keeping and supervision of all accounts; and

such other duties as the county board may by ordinance or resolution require.

(b) No money shall be drawn from the treasury of the county, nor shall any obligation for the expenditure of money be incurred, except in pursuance of the annual appropriation ordinance or resolution or legally enacted supplement thereto. Accounts shall be kept for each item of appropriation made by the county board. Each such account shall show in detail the appropriations made thereto, the amount drawn thereon, the unpaid obligations charged against it, and the unencumbered balance in the appropriation account, properly chargeable, sufficient to meet the obligation entailed by contract, agreement, or order.

(c) The director of finance shall either act as county assessor or shall appoint and have supervision over this official. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed by general law.

(d) The director of finance shall either act as tax collector and county treasurer or shall appoint and have supervision over these officials; provided, that in lieu of the election or appointment of a treasurer the county board may select and designate annually, by ordinance or recorded resolution, some bank or banks or trust company as an official treasury for the funds of the county. All moneys received by any officer or employee of the county for or in connection with the business of the county shall be paid promptly into the hands of the county treasurer or the bank or trust company acting as county treasury. Any bank serving as a depository for county funds shall be subject to such requirements as to security therefor and interest thereon as prescribed by general statute. All interest on money so deposited shall accrue to the benefit of the county.

(e) The director of finance shall be charged with the keeping of all general books of financial and budgetary control for all departments and offices of the county. Report shall be made to him daily, or as often as he may require, showing the receipt of all moneys and disposition thereof. He shall submit to the county board through the manager each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as to show the exact financial condition of the county and of each department and division thereof. He shall submit once a year, or more often if the county board requires it, a complete financial statement showing the assets and liabilities of the county and of each of its subdivisions.

(f) The county board shall require an annual audit of the books of every county officer who handles public funds, to be made by an accountant who is not a regular officer or employee, and who is thoroughly qualified by training and experience. If the state provides an auditing service, whether at the expense of the state or the county, such audit may be considered as having satisfied the requirements of this section.

Either the county board or the manager may at any time order an examination or audit of the accounts of any officer or department of the county government. Upon the death, resignation, removal, or expiration of the term of any officer of the county, the director of finance shall cause

an audit and investigation of the accounts of such officer to be made and shall report the results thereof to the manager and the county board. In case of the death, resignation or removal of the director of finance, the county board shall cause an audit to be made of his accounts. If, as a result of any such audit, an officer be found indebted to the county, the county board shall proceed forthwith to collect such indebtedness.

(g) The director of finance shall either act as purchasing agent or shall appoint and have supervision over this official. The purchasing agent shall make all purchases for the county in the manner, and with such exceptions, as may be provided by resolution of the county board. He shall have authority to make transfers of supplies, materials and equipment between departments and offices, to sell any surplus supplies, materials, or equipment, and to make such other sales as may be authorized by the county board. He shall also have power, with the approval of the county board, to establish suitable specifications or standards for all supplies, materials and equipment to be purchased for the county, and to inspect all deliveries to determine their compliance with such specifications and standards. He shall have charge of such storerooms and warehouses of the county as the county board may provide.

Before making any purchase or sale, the purchasing agent shall invite competitive bidding under such rules and regulations as the county board may by ordinance or resolution establish. The purchasing agent shall not furnish any supplies, materials, equipment or contractual services to any department or office except upon receipt of properly approved requisition and unless there be an unencumbered appropriation balance sufficient to pay for the same.

History: En. Sec. 16, Ch. 109, L. 1931.

4954.17. Department of public works. The director of public works shall have charge of the construction and maintenance of county roads and bridges, county drains and all other public works; the construction and care of public buildings; store rooms and warehouses and such equipment and supplies as the county board may authorize; and shall perform such other duties as the county board may prescribe.

History: En. Sec. 17, Ch. 109, L. 1931; amd. Sec. 4, Ch. 56, L. 1933.

4954.18. Department of public welfare. The director of public welfare shall have charge of poor relief, hospitals, charitable and correctional institutions, parks and playgrounds, and public health; and shall perform such other duties as the county board may prescribe.

History: En. Sec. 18, Ch. 109, L. 1931.

4954.19. Officers to be appointed by manager—submission of budget. All county officers, deputies and other employees, excepting the county attorney and the county commissioners, who are to be regularly elected, and the county manager, who is to be appointed by the county commissioners, shall come under the general provisions of this act and be appointed by the county manager as in this act provided; that such officers shall prepare, and submit an annual budget for their respective offices in the manner now required by law to the county manager, which shall be in-

cluded in the budget required under section 4954.15, and that all claims for salaries and other expenses of these offices shall be audited and allowed or rejected in the same manner as other claims.

History: En. Sec. 19, Ch. 109, L. 1931; amd. Sec. 5, Ch. 56, L. 1933.

4954.20. Bonds of manager and director of finance. The county manager shall give bond to the amount of not less than fifteen thousand dollars; the director of finance shall give bond to the amount of twenty-five thousand dollars; in case the county manager serves also as director of finance, he shall give bond to the full amounts indicated above. The county board shall have the power to fix bonds in excess of these amounts and to require bonds of other county officers in their discretion, conditioned on the faithful discharge of their duties and the proper accounting for all funds coming into their possession.

History: En. Sec. 20, Ch. 109, L. 1931; amd. Sec. 6, Ch. 56, L. 1933.

4954.21. Contract interest prohibited. No member of the county board or other officer or employee of the county or person receiving a salary or compensation from funds appropriated by the county, shall be interested directly or indirectly in any contract to which the county is a party, either as principal, surety, or otherwise; nor shall any such officer or employee or his partner, agent, servant or employee or the firm of which he is a member purchase from or sell to the county, any real or personal property, nor shall he be interested, directly or indirectly, in any work or service to be performed for the county or in its behalf. Any contract made in violation of any of these provisions shall be void.

History: En. Sec. 21, Ch. 109, L. 1931.

4954.22. Reverting to former form of government authorized. Provided that any county operating under the managerial form of government herein created may revert to the former form of government by petition and the same procedure as outlined in section 4954.2.

History: En. Sec. 22, Ch. 109, L. 1931.

4954.23. The recall of county commissioners. One or more county commissioners may be removed by the electors qualified to vote for a successor of such incumbent. A petition of fifty-one per cent. of all qualified electors registered for the last general election, demanding the election of a successor to the person sought to be removed, shall be filed with the director of finance of the county, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature, his place of residence; one of the signers shall make oath before an officer, competent to administer oaths, that the statements therein are true, as he believes and that each signature to the paper appended is the genuine signature of the person it purports to be. On the filing of a sufficient petition, the director of finance shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of filing of such petition. The director of finance shall cause to be made publication of notice and all arrangements for holding of such election and the same shall be conducted and returned and the

results thereof declared, in all respects and in the same manner as any other election. Nominations hereunder shall be made by filing with the director of finance, at least thirty days prior to such special election, a statement of candidacy, accompanied by a petition signed by electors entitled to vote at such special election, equal in number to at least ten per cent. of the entire number of persons registered to vote at the last preceding general election. The ballot for such special election shall be in substantially the following form:

“OFFICIAL BALLOT

Special election for the balance of the unexpired term of

..... for

(Vote for one only)

(Name of candidate)

(Name of present incumbent)

(Official ballot attest)

Signature.....

Director of finance.”

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself and unless he requests otherwise in writing, the director of finance shall place his name on the official ballot without nomination. In case of any such removal election, the candidate or candidates receiving the highest number of votes shall be declared elected. If the incumbent is not re-elected, he thereupon shall be deemed removed from the office, upon the qualification of his successor. If the incumbent receives the highest number of votes, or in case of a removal election for more than one commissioner, he or they receiving a sufficient number of votes so that his or their vote is the highest number for said office or offices of commissioner, he or they shall continue in office. The said method of removal shall be cumulative and additional to the methods herein provided by law.

History: En. Sec. 7, Ch. 56, L. 1933.

CHAPTER 375

GENERAL POWERS OF CITIES AND TOWNS

Section 4955. General powers.

4956. Distribution of powers of cities.

4957. Distribution of powers of towns.

4958. City and town, how named, general corporate powers.

4955. General powers. A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this chapter, or in special laws heretofore enacted.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R. C. M. 1921. Cal. Pol. C. Sec. 4354.

Operation and Effect

A city has only such authority as is conferred upon it by express legislative declaration or necessary implication, and where there is a fair and reasonable doubt

as to the existence of a particular power, it must be resolved against the municipality and the power denied. *Davenport v. Kleinschmidt*, 6 M 502, 527, 13 P 249; *City of Helena v. Kent*, 32 M 279, 283, 80 P 258; *State ex rel. Quintin v. Edwards*, 40 M 287, 303, 106 P 695; *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 31, 130 P 446; *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544; *Sharkey v. City of Butte*, 52 M 16, 19, 155 P 266; *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 108, 173 P 799.

A city has no powers except such as are conferred upon it by legislative grant either directly or by necessary implication. *Davenport v. Kleinschmidt*, 6 M 502, 527, 13 P 249; *City of Helena v. Kent*, 32 M 279, 283, 80 P 259; *Palmer v. City of Helena*, 40 M 498, 507, 107 P 512; *Sharkey v. City of Butte*, 52 M 16, 19, 155 P 266.

It is the duty of a city organized under the laws of this state to establish and improve streets, and damages can be recovered by one who is injured by its negligence in permitting its streets to become and remain in a dangerous condition. *Sullivan v. City of Helena*, 10 M 134, 141, 25 P 94; *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; *May v. City of Anaconda*, 26 M 140, 142, 66 P 759; *Ford v. Great Falls*, 46 M 292, 306, 127 P 1004.

This section, taken in connection with section 4958, and subdivision 1 of section 5039, constitutes a general grant of power, as well as a limitation of power, for authority is given to the city to pass all ordinances necessary for its government and management, and such ordinances shall not contravene constitutional or statu-

tory provisions. *City of Helena v. Kent*, 32 M 279, 285, 80 P 259.

When the mode of exercising any power is pointed out in the statute granting it to a municipal corporation, the mode thus prescribed must be pursued in all substantial particulars. *McGillie v. Corby*, 37 M 249, 254, 95 P 1063; *Carlson v. City of Helena*, 39 M 82, 109, 102 P 39; *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544.

In an action against a city to recover damage for injuries to real property, an averment in the complaint that the city "is a municipal corporation, organized and existing under the laws of the state," was sufficient as against the objection that the pleading did not state a cause of action. Judicial notice will be taken of the fact that during a certain year a city was a municipal corporation existing under the laws of this state. *Drew v. City of Butte*, 44 M 124, 125, 119 P 279.

No consistency whatever has been observed in the legislative use of the term "town." *State ex rel. Powers v. Dale*, 47 M 227, 230, 131 P 670.

The entire municipal code is to be treated as one statute whose provisions are interdependent. *Brown v. Foster*, 48 M 114, 118, 135 P 993.

References

Cited or applied as section 3202, revised codes, in *Davis v. Stewart*, 54 M 429, 434, 171 P 281; *State ex rel. McLeod v. District Court*, 67 M 164, 168, 215 P 240; *State ex rel. Altop v. City of Billings et al.*, 79 M 25, 33, 255 P 11.

4956. Distribution of powers of cities. Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court.

History: Ap. p. Sec. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R. C. M. 1921. Cal. Pol. C. Sec. 4355.

Operation and Effect

In the exercise of its legislative powers, a city is ruling its people, and is bound to

4957. Distribution of powers of towns. Every town has legislative, executive, and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated.

History: Ap. p. Sec. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R. C. M. 1921.

4958. City and town, how named, general corporate powers. Every city or town organized under this title is entitled "the city of....."

(naming it), or “the town of.....” (naming it), and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatsoever, and may have and use a common seal; may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and dispose of the same for the common benefit; and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or the state.

History: Ap. p. Sec. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R. C. M. 1921.

Operation and Effect

Mandamus will lie to compel a city to audit and pay a bill which it owes to a water company for the rent of hydrants, although this section provides that cities may sue or be sued. State v. Great Falls

City Council, 19 M 518, 537, 49 P 15; State ex rel. Kaiser W. Co. v. City of Philipsburg, 23 M 16, 22, 57 P 405.

References

Cited or applied as section 4703, political code, in State ex rel. Tel. Co. v. Mayor of Red Lodge, 30 M 338, 344, 76 P 758; City of Helena v. Kent, 32 M 279, 285, 80 P 259; State ex rel. Altop v. City of Billings et al., 79 M 25, 32, 255 P 11.

CHAPTER 376

CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

- Section 4959. Cities and towns classified.
 4960. Basis of classification.
 4961. Organization of cities and towns—petition and census.
 4962. Election—how conducted.
 4963. First election for officers.
 4964. Officers elected and conduct of election.
 4965. Existing cities reorganized hereunder.
 4966. Such cities become cities of the first or second class or towns.
 4967. Old officers continue in office—election.
 4968. Effect of reorganization of cities and towns hereunder.

4959. Cities and towns classified. Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921.

References

Cited or applied as section 3206, revised codes, in Davis v. Stewart, 54 M 429, 434, 171 P 281; State v. Board of County Commissioners, 83 M 540, 555, 273 P 290.

4960. Basis of classification. The census taken under the direction of Congress of the United States in the year eighteen hundred and ninety, and every ten years thereafter, shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907; re-en. Sec. 4960, R. C. M. 1921.

4961. Organization of cities and towns—petition and census. Whenever the inhabitants of any part of a county desire to be organized into

a city or town, they may apply by petition in writing, signed by not less than fifty qualified electors, residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards.

History: First general municipal incorporation act was that of Feb. 17, 1881 (L. 1881, pp. 13-38); superseded by Secs. 315-440, 5th Div. Comp. Stat. 1887. Many of the provisions of this act are so different from the present law that exact historical comparisons of the several sections cannot be made. This section en. Sec. 315, 5th Div. Comp. Stat. 1887; re-en.

Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921.

References

Cited or applied as section 3208, revised codes, as amended, in *Davis v. Stewart*, 54 M 429, 434, 171 P 281.

4962. Election—how conducted. After filing the petition and census, if there be the requisite number of inhabitants for the formation of a municipal corporation, as required in the preceding section, the county commissioners must call an election of all the qualified electors residing in the territory, described in the petition. Said election must be held at a convenient place within the territory described in the petition, to be designated by the board, notice of which election must be given by publication in some newspaper published within the limits of the territory to be incorporated, or, if none be published therein, by posting notice in three public places within said limits. The notice must be published thirty days prior to the election, and must specify the time and place when and where the same is held, and contain a description of the boundaries of the city or town. The board must appoint judges and clerks of election, who must qualify as required by law, and after the election they must report the result to the board, together with the ballots cast at said election. The ballots used at the election must be "For incorporation" or "Against incorporation," and all elections must be conducted as provided in sections 531 to 828 of these codes.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R. C. M. 1921.

4963. First election for officers. When the incorporation of a city or town is completed, the board of county commissioners must give notice for thirty days in a newspaper published within the limits of the city or

town, or, if none be published therein, by posting notices in six public places within the limits of the corporation, of the time and place or places of holding the first election for offices of the corporation. At such election all the electors qualified by the general election laws of the state, and who have resided within the limits of the city or town for six months, and within the limits of the ward for thirty days preceding the election, are qualified electors and may choose officers for the city or town, to hold office as prescribed in the next succeeding section.

History: Ap. p. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4722, Pol. C. 1895; re-en. Sec. 3210, Rev. C. 1907; re-en. Sec. 4963, R. C. M. 1921.

Operation and Effect

The expression "preceding the election," as used in this section, is equivalent in meaning to "next preceding the election." *Dowty v. Pittwood*, 23 M 113, 118, 57 P 727.

4964. Officers elected and conduct of election. At such election there must be elected, in a city of the first class, a mayor, a police judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided; in a city of the second class, a mayor, a police judge, a city treasurer, a city marshal, and two aldermen from each ward; in a town, a mayor, and two aldermen from each ward, who hold office until the first Monday of May after the first annual election, and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907; re-en. Sec. 4964, R. C. M. 1921.

4965. Existing cities reorganized hereunder. All cities and towns existing or heretofore incorporated under the laws of the territory or state of Montana, either under general or special laws or charters, on the adoption of this code become and are incorporated under the provisions of this code relative to the government of cities and towns, and have the powers conferred, or that may hereafter be conferred by law, upon cities or towns of the class to which each may belong.

History: En. Sec. 5032, Pol. C. 1895; re-en. Sec. 3481, Rev. C. 1907; re-en. Sec. 4965, R. C. M. 1921.

and other sections of the code. *State ex rel. Powers v. Dale*, 47 M 227, 229, 230, 131 P 670.

Operation and Effect

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this

References

Cited or applied as section 5032, political code, in *Drew v. City of Butte*, 44 M 124, 125, 119 P 279.

4966. Such cities become cities of the first or second class or towns. Such cities or towns are and become cities of the first or second class or towns according to their population as determined by the federal census of 1890.

History: En. Sec. 5033, Pol. C. 1895; re-en. Sec. 3482, Rev. C. 1907; re-en. Sec. 4966, R. C. M. 1921.

4967. Old officers continue in office—election. All officers of such city or town holding office at the time of the adoption of this code remain in office until the next annual election and the first Monday of May next ensuing thereafter, and until their successors are elected and qualified. The duties and compensation of such officers and the liabilities of sureties on official bonds remain the same. All elections must be held under the provisions of this code relative to the government of cities and towns.

History: En. Sec. 5034, Pol. C. 1895; re-en. Sec. 3483, Rev. C. 1907; re-en. Sec. 4967, R. C. M. 1921.

4968. Effect of reorganization of cities and towns hereunder. Any such city or town is the identical corporation theretofore existing, and the reorganization hereunder in no way affects or impairs the title to any property owned or held by such city or town, or in trust therefor, or any debts, demands, liabilities, bonds, or other evidences of indebtedness, or other obligations in favor of or against such city or town, or any action or proceeding then pending, nor does it operate to repeal or affect in any manner any ordinance, resolution, or by-law theretofore passed or adopted and remaining unrepealed, or to discharge any person from any liability, civil or criminal, for any violation thereof; but such ordinances, resolutions, and by-laws, so far as the same are not in conflict with that part of this code relating to the government of cities and towns, are and remain in full force until repealed or amended, and all proceedings commenced theretofore, after the adoption of this code, must be conducted in accordance with the provisions of this code relating to the government of cities and towns.

History: En. Sec. 5035, Pol. C. 1895; re-en. Sec. 3484, Rev. C. 1907; re-en. Sec. 4968, R. C. M. 1921.

Operation and Effect

This section is not curative in character, but was intended simply to preserve the

statu quo of all municipal corporations in existence at the time of the adoption of the code of 1895. It imparted no validity to a void ordinance providing compensation for the acting mayor of a municipality. *McGillie v. Corby*, 37 M 249, 254, 95 P 1063.

CHAPTER 377

CHANGE OF CLASSIFICATION OF CITIES AND TOWNS

- Section 4969. Proceedings for advancement and census.
- 4970. Resolution declaring the advancement.
- 4971. New officers—election.
- 4972. Old ordinances, etc., remain in force until when.
- 4973. Cities may be reduced in class—proceedings.
- 4974. Disincorporation of city or town—proceedings.
- 4975. Duty of county clerk and city or town treasurer—property and money to be turned over.

4969. Proceedings for advancement and census. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census, that such city or town has the requisite population to entitle it to be classified as provided in section 4959 of this code, such city or town must be advanced as provided in the next section.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907; re-en. Sec. 4969, R. C. M. 1921.

4970. Resolution declaring the advancement. If it appears by such census that the city or town contains the requisite population to be

advanced, the council must thereupon, by resolution, declare that the town is advanced to a city of the first, second, or third class, or a city of the third class is advanced to a city of the second or first class, or a city of the second class is advanced to a city of the first class, as the case may be, and file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class, and a city of the third class becomes a city of the second or first class, and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907; re-en. Sec. 4970, R. C. M. 1921.

4971. New officers—election. The first election of officers of the new municipal corporation organized under the provisions of this chapter must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907; re-en. Sec. 4971, R. C. M. 1921.

4972. Old ordinances, etc., remain in force until when. All ordinances, by-laws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907; re-en. Sec. 4972, R. C. M. 1921.

4973. Cities may be reduced in class—proceedings. Whenever it appears by the census taken by the United States, state, or otherwise, that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by a resolution, declare that such city be reduced to a city of the second class or town, as the case may be. A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns. The provisions of sections 4971 and 4972 of this code apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R. C. M. 1921.

4974. Disincorporation of city or town—proceeding. Whenever it appears by such census that a city or town has a population of less than five hundred (500) inhabitants, the corporate existence of such city or town under this code relative to cities and towns, may be discontinued, upon the filing of a petition requesting that such corporate existence be discontinued, signed by at least two-thirds ($\frac{2}{3}$) of the resident freeholders of said city or town, as certified to by the county clerk and recorder of the county in which said city or town is situated, with the board of county commissioners of said county. Upon the filing of said petition as above provided, with

the board of county commissioners, the said board must declare by resolution, that the incorporation thereof be discontinued, and must provide for the payment of the indebtedness of the same, and thereafter annually levy a tax on all the property situated within the limits of such city or town until all of such indebtedness is paid. The books, documents, records, papers and seal of such city or town must be deposited with the county clerk for safe-keeping and reference, and the records of the police judge or police court must be deposited with one of the justices of the peace of the township in which such city or town is situated, who has power to execute and complete all unfinished business of such police judge or court.

History: En. Sec. 4955, Pol. C. 1895; re-en. Sec. 3452, Rev. C. 1907; re-en. Sec. 4974, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1931.

Operation and Effect

Held, in interpretation of this section, providing for the disincorporation of a town, and declaring that it may be disincorporated "upon the filing of a petition, signed by at least two-thirds of the resident freeholders of said town, as certified to by the county clerk, with the board of county commissioners," etc., that thereunder the county clerk is authorized to certify to the fact that the petition is signed by the required number of resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Id. In carrying out the command of the statute above (this section), the county clerk has the implied power of investigating and determining who are the resident freeholders of the town the disincorporation of which is sought, whether or not the signatures to the petition are genuine, and whether or not the total number of

bona fide signers thereof constitute at least two-thirds of the resident freeholders.

Id. While ordinarily the certificate, made by the county clerk under this section, that the petition for disincorporation meets the requirements of the act, is conclusive and the board of county commissioners must make the order of disincorporation, mandamus should not issue to compel it to do so, if fraud or mistake on the part of the clerk be made apparent, the board having the implied power to disallow the petition if at a hearing wrongdoing or mistake be proven.

Id. Signers of a petition such as the one above referred to may withdraw therefrom at any time before the county clerk has certified thereto and filed it with the board of county commissioners, unless they signed under misrepresentations of material facts to induce action on their part, in which event, if they act promptly, they may be allowed to withdraw after the date of filing, provided their proof of fraud be clear and convincing.

4975. Duty of county clerk and city or town treasurer—property and money to be turned over. The county clerk must send a certified copy of the resolution of discontinuance to the secretary of state, and all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and all other property must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness.

History: En. Sec. 4956, Pol. C. 1895; re-en. Sec. 3453, Rev. C. 1907; re-en. Sec. 4975, R. C. M. 1921.

CHAPTER 378

ADDITIONS TO CITIES AND TOWNS

Section 4976. Additions to cities or towns.

4977. Additions, how made.

4978. Extension of boundaries to include contiguous platted tracts.

4979. Election on the question of annexation.

4976. Additions to cities or towns. Whenever territory adjoining any incorporated city or town is surveyed, and laid off into streets or blocks

as an addition thereto, upon filing the map or plat thereof in the office of the county clerk, said territory may become a part of such city or town, upon the approval of the mayor and a majority of the council indorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R. C. M. 1921.

Operation and Effect

Where a certain tract of land was not a part of the city, and the owner was not entitled to the privileges of an owner of city lots, he was under no obligation to pay special assessments for a sewer constructed by the city in the street in front of such land. *Farlin v. Hill*, 27 M 27, 36, 69 P 237. See *Sharkey v. City of Butte*, 52 M 16, 21, 155 P 266.

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this

and other sections of the code. State ex rel. *Powers v. Dale*, 47 M 227, 229, 230, 131 P 670.

The approval of the mayor and a majority of the council indorsed on the map or plat of an addition to a city or town is essential to bring the territory included therein within the jurisdiction of the council. *Pool v. Town of Townsend*, 58 M 297, 304, 191 P 385.

References

Cited or applied as section 3212, revised codes, in *Barnard Realty Co. v. City of Butte*, 48 M 102, 113, 136 P 1064; *De Sandro v. Missoula Light & Water Co.*, 48 M 226, 234, 136 P 711.

4977. Additions, how made. The council has control of all such additions, and power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town, or in the addition thereto, contiguous to or near the proposed addition. The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with, and the plat thereof has been submitted to and approved by the mayor and council, and such approval indorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R. C. M. 1921.

References

Cited or applied as section 3213, revised

codes, in *Barnard Realty Co. v. City of Butte*, 48 M 102, 113, 136 P 1064; *De Sandro v. Missoula Light & Water Co.*, 48 M 226, 234, 136 P 711.

4978. Extension of boundaries to include contiguous platted tracts. (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, and which shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants thereof, and of the inhabitants of any contiguous platted tracts or parcels of land, as aforesaid, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publica-

tion of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders of the territory proposed to be embraced.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk or such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision 2 hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925.

Remedy for Illegal Inclusion

The remedy of injunction is available to one whose taxes would be increased by an illegal inclusion of his property within the limits of a city. *Sharkey v. City of Butte*, 52 M 16, 23, 155 P 266.

Id. The recital in a city council's resolution that territory proposed to be annexed to the city was contiguous and platted, when such was not the fact, could not inure to the city's benefit, or preclude a resident of the territory attempted to be annexed, from any available remedy he would otherwise have.

Term "Incorporated"

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities and towns, is clearly shown in this and other sections of the code. *State ex rel. Powers v. Dale*, 47 M 227, 229, 230, 131 P 670.

4979. Election on the question of annexation. When a city or town desires to be annexed to another and contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities respectively, the terms and conditions on which the annexation can be made, and if the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare, and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare, and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated, and when so filed the annexation is complete, and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation. Such annexations do not affect or impair any rights, obligations, or liabilities then existing, for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R. C. M. 1921.

Unplatted Ground

A city may not extend its boundaries so as to include unplatted ground, and proceedings had to annex territory, a portion of which was unplatted, contrary to the provisions hereof, were void in toto. *Sharkey v. City of Butte*, 52 M 16, 21, 155 P 266.

Id. Where the purpose of a taxpayer's action was to have proceedings looking to the annexation of territory to a city declared void ab initio, and the city enjoined from assuming jurisdiction over the persons or property situated within unplatted territory illegally sought to be included, the attack was direct and not collateral.

When Eligible for Incorporation

The language of this section is unequivocal, declaring that before any territory is eligible for incorporation in a city by an extension of the city's boundaries, such territory must be (a) platted into lots or blocks, streets, and alleys; (b) a map or plat thereof must be on file with the county clerk and recorder; and (c) the territory must be contiguous to the city's limits. *Sharkey v. City of Butte*, 52 M 16, 20, 155 P 266.

CHAPTER 379

ALTERATION OF BOUNDARIES OF CITIES AND TOWNS

- Section 4979.1. Alteration of boundaries of cities and towns—exclusion of portion.
 4979.2. Petition—contents—notice—consideration of communications—action of council—meaning of terms "contiguous" and "adjacent."
 4979.3. Resolution and map to be filed—effective date of resolution.
 4979.4. Liability of excluded territory for existing indebtedness.
 4979.5. Jurisdiction of city or town for levying tax to pay existing indebtedness.

4979.1. Alteration of boundaries of cities and towns—exclusion of portion. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this act.

History: En. Sec. 1, Ch. 33, L. 1927.

4979.2. Petition—contents—notice—consideration of communications—action of council—meaning of terms “contiguous” and “adjacent.” A petition in writing signed by a number of the qualified electors residing within the corporate limits of such city or town, equal to a majority of the votes cast at the last city election held therein, or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town. Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made, and shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described. Said petition shall also describe the streets, alleys, avenues and public places, if any, in the territory sought to be excluded, and shall distinctly specify which of said streets, avenues, alleys or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town. Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof. If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town, or by the owners of not less than three-fourths in value of the territory to be excluded, and that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof, and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded, from the owners of the territory proposed to be excluded. The clerk shall, at the next regular meeting of the city or town council, after expiration of the said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition. Said resolution shall also describe the streets, avenues, alleys and public

places in said excluded territory which are to be vacated and abandoned and, upon the filing of the certified copy of the resolution as hereinafter provided, all such streets, avenues, alleys and public places, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property. Such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded, nor after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded. That for the purposes of this act the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935.

4979.3. Resolution and map to be filed—effective date of resolution.

Within thirty days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located. Said resolution shall become effective thirty days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

History: En. Sec. 3, Ch. 33, L. 1927.

4979.4. Liability of excluded territory for existing indebtedness. Such alteration shall not relieve any territory excluded from the limits of a city or town, from its liability on account of any outstanding bonded indebtedness of such city or town, or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927.

4979.5. Jurisdiction of city or town for levying tax to pay existing indebtedness. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in section 4979.4, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927.

CHAPTER 380

PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

- Section** 4980. Plats and surveys to be made and recorded.
4981. What plat must contain.
4982. Survey—by whom to be made and what to contain.
4983. Further requirements as to survey.
4984. Certificate of surveyor.
4985. Certificate of dedication and form.
4986. Abstract of title—release of mortgage or other lien—inclusion of release and judgment in abstract.
4987. Plat to be prepared in duplicate—approval of same by municipal council or county commissioners—filing and recording.
4988. Plats must be made on mounted drawing-paper, filed, and recorded.

- 4989. No lots to be sold until plat recorded—penalty.
- 4990. Donations or grants on a plat have the effect of a deed.
- 4991. New survey and plat may be ordered.
- 4992. Form of plat may be prescribed by ordinance.
- 4993. Small tracts must be platted, surveyed, and certified before sale.
- 4994. Penalty for violation of law.

4980. Plats and surveys to be made and recorded. Any person, company, or corporation, who may lay out any city or town, or any addition to any city or town, or any tract of land within the limits of any city or town, or townsite, or transfer any lots, blocks, or tracts therein, must cause to be made an accurate survey and plat thereof, and cause the same to be recorded in the office of the county clerk and recorder of the county in which such land lies.

History: En. Sec. 5000, Pol. C. 1895; re-en. Sec. 3465, Rev. C. 1907; amd. Sec. 1, Ch. 119, L. 1917; re-en. Sec. 1, Ch. 64, L. 1933.

References

Cited or applied as section 5000, polit-

ical code, before amendment, in *Farlin v. Hill*, 27 M 27, 33, 69 P 237; as section 3465, revised codes, in *De Sandro v. Missoula Light & Water Co.*, 48 M 226, 234, 136 P 711.

4981. What plat must contain. The plat must show as follows:

1. All streets, alleys, avenues, and highways, and the width thereof.
2. All parks, squares, and all other grounds dedicated or reserved for public uses, with the boundaries and dimensions thereof.
3. All lots and blocks with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot and block.
4. The angles of intersection of all boundary lines of the lots and blocks wherever the angle of intersection is not a right angle.
5. The location of all stone or iron monuments set to establish street lines.
6. The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
7. The location of all section corners or legal subdivision corners of sections within the limits of said plat.
8. The adjoining block corners of all surveyed and adjoining additions, and the streets, alleys, avenues, and highways of such adjoining additions, for the purpose of showing how the new plat and survey conform to such adjoining addition of surveyed and platted ground.
9. For the purpose of promoting the public comfort, welfare, and safety, such plat and survey must show that at least one-ninth of the platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds; the one-half of such area so dedicated to the public for parks and playgrounds may be distributed in small plots of not less than one block in area through the different parts of the area platted; and the one-half shall be consecrated into larger parks on the outer edge of the area so platted. The board of county commissioners of the county, or the council of the city or town, is hereby authorized to suggest suitable places for such parks and playgrounds, and for good cause shown may make an order in the proceedings of such body (to be indorsed and certified on said plat), diminishing the amount of such area herein required to be dedicated as public parks and playgrounds to

not less than one-twelfth thereof, exclusive of streets, alleys, avenues, and highways; provided, that where such platted area consists of a tract of land containing less than twenty acres, such board of county commisisoners of the county, or the council of the city or town, may make an order in the proceedings of such body, to be indorsed and certified on said plat, that no park or playground be set aside or dedicated.

History: Ap. p. Sec. 1, p. 39, L. 1883; re-en. Sec. 2031, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 226, L. 1889; amd. Sec. 5001, Pol. C. 1895; re-en. Sec. 3466, Rev. C. 1907; amd. Sec. 2, Ch. 119, L. 1917; re-en. Sec. 4981, R. C. M. 1921.

ical code, before amendment, in *Farlin v. Hill*, 27 M 27, 33, 69 P 237; as section 3466, revised codes, before amendment, in *Barnard Realty Co. v. City of Butte*, 48 M 102, 113, 136 P 1064; State ex rel. *Cotter v. District Court*, 49 M 146, 152, 140 P 732.

References

Cited or applied as section 5001, polit-

4982. Survey—by whom to be made and what to contain. A survey of the city or town site or addition must be made by the county surveyor, or some other competent surveyor, who must mark all the corners of the blocks and lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be six inches by six inches, and be placed in the ground to the depth of one foot.

History: En. Sec. 5002, Pol. C. 1895; re-en. Sec. 3467, Rev. C. 1907; re-en. Sec. 4982, R. C. M. 1921.

4983. Further requirements as to survey. If a stone is used as a monument it must have a cross-cut in the top at the point of intersection of the street lines, or a hole may be drilled in the stone to mark such point. If an iron monument is used, it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and establish permanently the lines of all the streets.

History: En. Sec. 5003, Pol. C. 1895; re-en. Sec. 3468, Rev. C. 1907; re-en. Sec. 4983, R. C. M. 1921.

4984. Certificate of surveyor. The surveyor must make and subscribe in the plat a certificate that such survey was made according to the provisions of this chapter, stating the date of survey, and verify the same by his oath.

History: En. Sec. 5004, Pol. C. 1895; re-en. Sec. 3469, Rev. C. 1907; re-en. Sec. 4984, R. C. M. 1921.

References

Cited or applied as section 5004, political code, in *Farlin v. Hill*, 27 M 27, 33, 69 P 237.

4985. Certificate of dedication and form. The owner of the land so platted, or his duly authorized attorney, must make on such plat a certificate, to be known as "The certificate of dedication," which may be in the following form:, do hereby certify that have caused to be surveyed, subdivided, and platted into lots, blocks, streets, and alleys, as shown by the plat and certificate of survey hereunto annexed, the fol-

lowing described tract of land, to-wit: (Here describe land included in plat), to be known and designated (here give full name of city, town, or addition), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat, are hereby granted and donated to the use of the public forever. Dated this _____, day of _____, A. D. 19.....; which must be signed by all the owners and acknowledged in the same manner as a deed.

History: En. Sec. 5005, Pol. C. 1895; re-en. Sec. 3470, Rev. C. 1907; re-en. Sec. 4985, R. C. M. 1921.

Operation and Effect

The fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of the city or town or an addition thereto is recorded,

is equivalent to a deed. *Hershfield v. Rocky Mt. Bell Tel. Co.*, 12 M 102, 115, 29 P 883; *Kipp v. Davis-Daly Copper Co.*, 41 M 509, 516, 110 P 237.

References

Cited or applied as section 5005, political code, in *Farlin v. Hill*, 27 M 27, 34, 69 P 237; *Butte Electric Ry. Co. v. Brett*, 80 M 12, 16, 257 P 478.

4986. Abstract of title—release of mortgage or other lien—inclusion of release and judgment in abstract. The owner of the land so surveyed and platted must have prepared and file with said plat an abstract of the title of the land; such abstract of title must be prepared and certified to by an abstracter who has been duly qualified to engage in the business of compiling abstracts of titles to real estate in the state of Montana; such abstract of title must be submitted to the county attorney of the county when said platted land is outside of any city or town, or to the city or town attorney if said platted land is within the boundaries of any city or town, to examine and indorse on said abstract of title his examination of the same, and that the person making the certificate of dedication is the owner in fee simple of said land so platted.

Persons holding any mortgage or other claim or lien against said land must sign, acknowledge, and record a release in full of any and all claims against the same, which must be shown in the abstract of title as filed; and if the county attorney or city attorney refuses to certify to said title as herein provided, it shall be the duty of the person claiming to own said land in fee simple to begin suit to quiet title and prosecute the same to final judgment. After final judgment is had, he shall include a certified copy of such judgment in said abstract of title, preceding the certificate of said abstracter, and it shall be followed by the certificate of said county or city attorney, as the case may be, and such abstract of title shall, together with the plat, be filed with the proper officer.

History: En. Sec. 5006, Pol. C. 1895; re-en. Sec. 3471, Rev. C. 1907; amd. Sec. 3, Ch. 119, L. 1917; re-en. Sec. 4986, R. C. M. 1921.

4987. Plat to be prepared in duplicate—approval of same by municipal council or county commissioners—filing and recording. All such plats must be prepared in duplicate, and when the land platted is within the boundaries of an incorporated city or town, such plats must be submitted to the city or town council for examination and approval or rejection, and when found to conform to law to be approved in duplicate by the council and the city or town engineer, and a certificate of approval shall be indorsed thereon signed by the mayor and the clerk; and a certificate

of the city or town engineer shall be indorsed thereon showing that the plat conforms to the the adjoining additions or plats of the city or town already platted, as near as the circumstances will admit; and one of such plats so approved and certified shall be filed with the city or town clerk, and one shall be filed with the county clerk and recorder of the county, which shall be the official plat and survey.

When the land platted is outside of the boundaries of a city or town, such plat must be prepared in duplicate and submitted to the board of county commissioners of the county for its examination and approval or rejection, and when found to conform to law to be approved in duplicate by such board of county commissioners and by the county surveyor, and a certificate of approval shall be signed by the chairman of such board and by the county clerk and by the county surveyor, and both plats shall be filed and recorded with the county clerk and recorder. When such town site is duly included within the boundaries of an incorporated city or town, upon application of such city or town council to such board of county commissioners showing such incorporation, such board shall by an order direct that one of such plats so approved, certified, and filed shall be delivered to the mayor and city clerk, which shall be filed and become the official plat and survey of such city or town.

History: En. Sec. 5007, Pol. C. 1895; re-en. Sec. 3472, Rev. C. 1907; amd. Sec. 4, Ch. 119, L. 1917; re-en. Sec. 4987, R. C. M. 1921.

4988. Plats must be made on mounted drawing-paper, filed, and recorded. All such plats must be made on mounted drawing-paper, and filed and recorded in the office of the county clerk, and he must keep the original plat for inspection.

History: En. Sec. 5008, Pol. C. 1895; re-en. Sec. 3473, Rev. C. 1907; re-en. Sec. 4988, R. C. M. 1921.

4989. No lots to be sold until plat recorded—penalty. Such plat must be recorded before any lots or blocks are sold or transferred in any manner, and the owner thereof, or any part of the same, must forfeit or pay for each lot sold or transferred, before the recording of such plat, a penalty not less than ten nor more than one hundred dollars, which must be recovered by the county attorney for the use of the county.

History: En. Sec. 5009, Pol. C. 1895; re-en. Sec. 3474, Rev. C. 1907; re-en. Sec. 4989, R. C. M. 1921.

4990. Donations or grants on a plat has the effect of a deed. Every donation or grant to the public, or to any person, society, or corporation, marked or noted as such on the plat of the city or town, or addition, must be considered, to all intents and purposes, as a deed to the said donee.

History: En. Sec. 5010, Pol. C. 1895; re-en. Sec. 3475, Rev. C. 1907; re-en. Sec. 4990, R. C. M. 1921.

4991. New survey and plat may be ordered. Whenever the recorded plat of any city or town or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or town or addition, the council is authorized to cause a new and correct survey and plat of such city or town or addition to be made and recorded in the office of the county clerk, which corrected plat

must follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the surveyor making the same must be indorsed thereon, referring to the original plat corrected thereby, and the defect existing therein, and corrected by such new survey and plat. The ordinance authorizing the making of such new plat must be recorded in the office of the county clerk. The surveyor's certificate must show where said ordinance is recorded.

History: En. Sec. 5011, Pol. C. 1895; re-en. Sec. 3476, Rev. C. 1907; re-en. Sec. 4991, R. C. M. 1921.

4992. Form of plat may be prescribed by ordinance. The council of any city or town has power by ordinance to prescribe the manner and form of making any survey of any plat of lands within the city or town.

History: En. Sec. 5012, Pol. C. 1895; re-en. Sec. 3477, Rev. C. 1907; re-en. Sec. 4992, R. C. M. 1921.

4993. Small tracts must be platted, surveyed, and certified before sale. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as vineyard tracts, acreage tracts, suburban tracts, or community tracts, or small areas less than the United States legal subdivision of ten acres, must cause the same to be surveyed, platted, certified, and recorded according to the provisions of this chapter before any part or portion of the same is sold or transferred; and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat.

History: En. Sec. 5013, Pol. C. 1895; re-en. Sec. 3478, Rev. C. 1907; amd. Sec. 5, Ch. 119, L. 1917; re-en. Sec. 4993, R. C. M. 1921.

4994. Penalty for violation of law. Any person who shall violate any of the provisions of this chapter is guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than three hundred dollars.

History: En. Sec. 6, Ch. 119, L. 1917; amd. Sec. 1, Ch. 48, L. 1921; re-en. Sec. 4994, R. C. M. 1921.

CHAPTER 381

OFFICERS AND ELECTIONS

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4995. Officers of city of the first class. The officers of a city of the first class consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city attorney, one city clerk, one chief of police, one assessor, one street commissioner, one city jailer, one city surveyor, and whenever a paid fire department is established in such city, a chief engineer and one or more assistant engineers, and any other officers necessary to carry out the provisions of this title. The city council may, by ordinance, prescribe the duties of all city officers and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907; re-en. Sec. 4995, R. C. M. 1921.

NOTE.—The reference to “title” in this section refers to a division of the Revised Codes of 1907 which included most of the laws relating to cities and towns.

Operation and Effect

The grant of power contained in this section, in the matter of prescribing the duties and fixing the compensation of city officers, is subject not only to the express and implied limitations found elsewhere in the title under which the section falls, but contains in itself a limitation as to the mode in which the power granted may be executed. *McGillie v. Corby*, 37 M 249, 254, 95 P 1063.

The fact that the chief of police is named in the general law, and the rest of the police officers were left to be brought into existence by the city council, cannot be construed as a declaration by the leg-

islature that his relation to the city and the public must be regarded as different from that of any other member of the police force. *State ex rel. Wynne v. Quinn*, 40 M 472, 476, 107 P 506.

Id. In so far as the method of appointment of members of the police force is concerned, this section is repealed by the provisions of section 5108; the method of appointment and removal by the later law is wholly inconsistent with the notion that the mayor and council are authorized to exercise the power of appointment as provided in the older law.

References

Cited or applied as section 4740, political code, in *City of Philipsburg v. Degenhart*, 30 M 299, 304, 76 P 694; as section 3216, revised codes, in *State ex rel. Quintin v. Edwards*, 38 M 250, 267, 99 P 940; *State ex rel. Klick v. Wittmer*, 50 M 22, 25, 144 P 648.

4996. Officers of city of second and third classes. The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. They may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex-officio city assessor, one chief of police, one city attorney, and any other officer necessary to carry out the provisions of this title. The city council may pre-

scribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R. C. M. 1921.

NOTE.—The “title” above referred to embraced the entire municipal law contained in the revised codes of 1907.

References

Cited or applied as section 3217, revised codes, in *Grush v. Bishop*, 46 M 97, 99, 102, 126 P 619; *State ex rel. Klick v. Wittmer*, 50 M 22, 25, 144 P 648; *State ex rel. Sandquist v. Rogers*, 93 M 355, 361, 18 P 2d 617.

4997. Officers of towns. The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex-officio assessor and a member of the council, and one treasurer, who may be ex-officio tax collector, and one marshal, who may be ex-officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R. C. M. 1921.

References

Cited or applied as section 3218, revised

codes, in *State ex rel. Ryan v. Board of Aldermen*, 45 M 188, 192, 122 P 569; *Grush v. Bishop*, 46 M 97, 99, 126 P 619; *State ex rel. Klick v. Wittmer*, 50 M 22, 25, 144 P 648.

4998. Trustees of public libraries—funds. The trustees of any public library created or existing in a city or town must be appointed by the mayor, with the advice and consent of the council. The number of such trustees and their duties must be prescribed by ordinance; provided, however that the “library fund” provided for in section 5049 of this code shall be invested by the city treasurer under the direction of the trustees of the library; and no money shall be paid out of said fund by him except on an order or warrant from said trustees, who shall have exclusive power to make contracts and expenditures for the support and maintenance of the library, and the purchase of books and other things for a library.

History: En. Sec. 4743, Pol. C. 1895; re-en. Sec. 3219, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1915; re-en. Sec. 4998, R. C. M. 1921.

4999. Council has power to abolish office. The city or town council has the power to abolish any office, the appointment to which is made by the mayor, with the advice and consent of the council, and discharge any officer so appointed, by a majority vote of the council; but no office created under this title must be abolished by the council.

History: En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907; re-en. Sec. 4999, R. C. M. 1921.

Operation and Effect

The only officers of a city of the first class actually created by the legislature are the mayor, two aldermen from each ward, a police judge, and a city treasurer, none of whom can be in any way affected by any action of the council, though other offices may be abolished. *State ex rel. Quintin v. Edwards*, 38 M 250, 269, 99 P 940.

This section has no application to a fireman, since section 5110 declares that he is to be deemed a municipal officer. *State ex rel. Driffill v. City of Anaconda*, 41 M 577, 581, 111 P 345.

The city council may, by a bare majority vote, abolish the office of city purchasing agent at any time and discharge the person appointed to fill it; hence, if the incumbent of it be an alderman, the two offices are incompatible, and one individual cannot fill both at the same time. *State ex rel. Klick v. Wittmer*, 50 M 22, 25, 144 P 648.

References

40 M 287, 310, 106 P 695; State ex rel.
Cited or applied as section 3220, revised Sandquist v. Rogers, 93 M 355, 361, 18
codes, in State ex rel. Quintin v. Edwards, P 2d 617.

5000. Power to consolidate offices. The city or town council may, by ordinance, consolidate any of the offices, the appointment to which is made by the mayor, with the advice and consent of the council, and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907; re-en. Sec. 5000, R. C. M. 1921.

5001. City or town to be divided into wards. The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

History: En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907; re-en. Sec. 5001, R. C. M. 1921.

5002. Division of cities and towns into wards. Cities of the first class must be divided into not less than four nor more than ten wards; cities of the second class into not less than three nor more than six; and cities of the third class into not less than two nor more than four wards; and towns into not less than two nor more than three wards. All changes in the number and boundaries of wards must be made by ordinance, and no new ward must be created unless there shall be within its boundaries one hundred and fifty electors, or more.

History: En. Sec. 4747, Pol. C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909; re-en. Sec. 5002, R. C. M. 1921.

5003. Annual elections in cities and towns—terms of office. On the first Monday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect a mayor and two aldermen from each ward, to be voted for by the wards they respectively represent; the mayor to hold office for a term of two (2) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of two (2) years, and until the qualification of his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of two (2) years, and until the qualification of their successors; provided, however, that in all cities and towns when the term of office of the incumbent mayor, alderman, police judge or city treasurer will not expire until the first Monday in May, 1936, a special election must be held on the first Monday in April, 1936, at which election a successor to such mayor, alderman, police judge or city treasurer shall be elected for a term of one (1) year, and thereafter no election shall be held for the election of city officers, except every second year.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935.

5004. Qualification of mayor. No person shall be eligible to the office of mayor unless he shall be at least twenty-five years old and a taxpaying freeholder within the limits of the city, and a resident of the state for at least three years, and a resident of the city for which he may be elected

mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921.

Operation and Effect

Under this section, requiring the mayor of a city to be a "taxpaying freeholder," a person who, at the time of his election, owned and paid taxes on personalty,

and owned realty on which he was not liable for taxes for that year because acquired since the date of assessment, is eligible to the office. *Mayor v. Sweeney*, 22 M 103, 105, 55 P 913.

References

Cited or applied as section 4749, political code, in *Brown v. Foster*, 48 M 114, 117, 135 P 993.

5005. Terms of aldermen—how decided. At the first annual election held after the organization of a city or town under this title, the electors of such city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, one from each ward to hold for a term of two years, and one for the term of one year, and until the qualification of their successors.

History: En. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907; re-en. Sec. 5005, R. C. M. 1921.

5006. Terms of office—when to begin. The terms of all officers elected at a municipal election are to commence on the first Monday in May after such election.

History: En. Sec. 4751, Pol. C. 1895; re-en. Sec. 3227, Rev. C. 1907; re-en. Sec. 5006, R. C. M. 1921.

5007. Who eligible. No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R. C. M. 1921.

Operation and Effect

The phrase "preceding the election," as used in this section, is equivalent in meaning to the expression "next preceding the election." *Dowty v. Pittwood*, 23 M 113, 118, 57 P 727.

This section is of general application, and controls aldermanic candidates who aspire to office at a first election after incorporation, as well as to those who seek like honors at subsequent elections. *Brown v. Foster*, 48 M 114, 119, 135 P 993.

The office of the police judge is the creation of the statute and not of the constitution. *State ex rel. Shea v. Cocking et al.*, 66 M 169, 172, 213 P 594.

Id. Where the legislature in creating an elective office prescribes no limitations or qualifications, the right to hold it is an implied attribute of citizenship and is presumed to be coextensive with that of voting at an election held for the purpose of choosing an incumbent for that office, those only who are competent to select the officer being deemed competent to hold it.

Id. Held, that blindness does not disqualify one from holding the office of police judge.

5008. Qualification of aldermen. No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him for at least one year preceding such election.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R. C. M. 1921.

Operation and Effect

The provision of this section requiring that any person, to be eligible to the office of alderman, must have been a resi-

dent of the ward where elected "for at least one year preceding the election," means one year next preceding the election. *Dowty v. Pittwood*, 23 M 113, 117, 57 P 727.

5009. Registration of electors. The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided.

History: En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R. C. M. 1921.

Impliedly Repealed

. Held, that this section, 5278 and 5279, relating to registration and qualifications of electors in special elections called on proposals to create or increase city indebtedness, were impliedly repealed by chapter 47, laws of 1929, (5199.1 and 5199.2 of this code) to the extent the chapter conflicts with said sections, except as to the matter of giving notice of such election, in which respect section 5279, is still con-

5010. Qualifications of electors. All qualified electors of the state who have resided in the city or town for six months and in the ward for thirty days next preceding the election are entitled to vote at any municipal election.

History: En. Sec. 4755, Pol. C. 1895; re-en. Sec. 3231, Rev. C. 1907; re-en. Sec. 5010, R. C. M. 1921.

Operation and Effect

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declaration of the voter touching the subject, if a part of the *res gestae*, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 165 P 599.

5011. Election judges and clerks—voting places. The council must appoint judges and clerks of election, and places of voting. There must be at least one place of voting in each ward, and there may be as many more as the council by ordinance shall fix, and the elector must vote in the ward in which he resides. The election precincts in a city or town must correspond with wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides, and all elections must be conducted according to the general laws of the state. In all cities where voting-machines are used, the city council must subdivide the wards into such number of voting precincts that there will be no more than six hundred votes in each precinct.

References

Cited or applied as section 4753, political code, in *Brown v. Foster*, 48 M 114, 117, 135 P 993.

trolling. *Weber v. City of Helena et al.*, 89 M 109, 115 et seq., 297 P 455.

Registration and Qualification

Held, on original application for writ of injunction, that the provisions of chapter 98, laws of 1923, as amended by chapter 47, laws of 1929, (5199.1 and 5199.2 of this code) and not this section, 5278 and 5279, govern the procedure to be followed for the registration of electors and their qualifications in a special city election called for the purpose of submitting to them the question of the issuance of city water plant bonds. *Weber v. City of Helena et al.*, 89 M 109, 115 et seq., 297 P 455.

Id. The presumption of a right to vote arises from the fact of registration, but slight proof of the lack of any necessary qualifications to vote is sufficient to overcome that presumption, and calls for evidence in affirmation of the voter's qualifications from the party who would benefit from the vote.

References

Cited or applied as section 4755, political code, in *Dowty v. Pittwood*, 23 M 113, 118, 57 P 727; *State ex rel. Shea v. Cocking et al.*, 66 M 169, 173, 213 P 594.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R. C. M. 1921.

5012. Canvass—when and how made. On the Monday following any election, the council must convene and publicly canvass the result, and issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for any one of the offices voted for, the council must thereafter, at its first regular meeting, decide by vote between the parties which is elected. If the council from any cause fails to meet on the day named, the mayor must call a special meeting of the council within five days thereafter, and, in addition to the notice provided for calling special meetings, must publish the same on two successive days in some newspaper published in such city or town. If the mayor fails to call said meeting within said five days, any three councilmen may call it. At such special meeting all elections, appointments, or other business may be transacted that could have been on the day first herein named.

History: En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907; re-en. Sec. 5012, R. C. M. 1921.

5013. Oath and bonds—vacancy. Each officer of a city or town must take the oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if any one, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R. C. M. 1921.

may be filled by the appointing power. State ex rel. Bennetts v. Duncan, 47 M 447, 453, 133 P 109.

Operation and Effect

The failure of the person elected or appointed to a city office to qualify within ten days, by taking the official oath, creates a vacancy under this section, which

References

Cited or applied as section 4758, political code, in City of Philipsburg v. Degenhart, 30 M 299, 303, 76 P 694.

5014. When duties of office begin. The officers elected enter upon their duties the first Monday of May succeeding their election, and officers appointed by the mayor, with the advice and consent of the council, within ten days after receiving notice of their appointment.

History: En. Sec. 4759, Pol. C. 1895; re-en. Sec. 3235, Rev. C. 1907; re-en. Sec. 5014, R. C. M. 1921.

5015. Vacancies—how filled—removal of officer. When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill

such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any officer.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R. C. M. 1921.

Operation and Effect

To justify removal of an officer for misconduct, it is not necessary that the actions made the basis of the charge against him must have been wilful; the official doing of an act may constitute misconduct, although there was no corrupt or malicious motive. *Leggatt v. Prideaux*, 16 M 205, 207, 40 P 377; *State ex rel. Wynne v. Examining and Trial Board*, 43 M 389, 399, 117 P 77; *State ex rel. Rowe v. District Court*, 44 M 318, 324, 119 P 1103; *State ex rel. Ryan v. Board of Aldermen*, 45 M 188, 195, 122 P 569; *Bailey v. Examining and Trial Board*, 45 M 197, 201, 122 P 572.

The office of police judge is a creature not of the constitution, but of the statute, and the incumbent thereof is not liable to impeachment. He is, however, a city officer, and may therefore, in a proper case, be removed by the city council. *State ex rel. Working v. Mayor*, 43 M 61, 63, 114 P 777.

Id. This section is in consonance with section 18, article V, of the state constitution, subjecting officers not liable to impeachment to removal in the manner provided by law, and is a proper exercise of the legislative authority therein granted.

Id. Until written charges have been filed with a city council, in conformity with the provision of this section, no proceeding looking to the removal of a city officer has been instituted.

Id. Prohibition does not lie at the suit of a police judge of a city to prohibit the city council from proceeding to remove him from office, where written charges

have not been filed against him as required by this section.

An alderman was properly found guilty of misconduct in office and removed, on the grounds that in his capacity as an attorney at law he defended one charged with conducting business without paying a license tax, and accepted a retainer to prosecute a suit against the town for damages and an injunction in regard to a sewer. *State ex rel. Ryan v. Board of Aldermen*, 45 M 188, 193, 122 P 569.

The provision of this section, requiring "a majority vote of the members" of the city council, that is, a majority of those constituting the actual membership of the body at the time, to fill a vacancy in an elective city office, and not section 5054, making "a majority of the whole number of the members elected" requisite for such purpose, is applicable in case a vacancy in its own body caused by resignation or death is to be filled. *State ex rel. Wilson v. Willis*, 47 M 548, 552, 133 P 962. See *State ex rel. Kliek v. Wittmer*, 50 M 22, 26, 144 P 648.

Having been rightfully chosen by the city council to fill a vacancy in its own body, and after taking and subscribing the constitutional oath, an alderman had the right to have his vote on the question of filling another vacancy, caused by death, recorded, even though a certificate of election had not been issued to him, and irrespective of the mayor's refusal to recognize him, or of the fact that an action to determine his official status was then pending. *State ex rel. Wilson v. Willis*, 47 M 548, 553, 133 P 962.

References

State v. District Court, 61 M 558, 566, 202 P 756; *State ex rel. O'Hern v. Loud*, 92 M 307, 311, 14 P 2d 432.

5016. Accountability of officers provided for. It is the duty of the council to provide for the accountability of all officers provided for in this title, by requiring of them sufficient security for the faithful performance of their duties or trust, which security must be given by them before entering upon their respective duties. If such security becomes insufficient, additional security may be required, and if not given within ten days, the council, by a vote of two-thirds of the members, may declare the office vacant, and may thereafter fill the same.

History: En. Sec. 4761, Pol. C. 1895; re-en. Sec. 3237, Rev. C. 1907; re-en. Sec. 5016, R. C. M. 1921.

Operation and Effect

This section provides for the accounta-

bility of all municipal officers, but does not prescribe what the conditions of the bond shall be. *City of Philipsburg v. Degenhart*, 30 M 299, 303, 76 P 694.

5017. Official bonds—how given. The city treasurer, city clerk, and city marshal, and such other city officers as the council by ordinance may require, must give official bonds, in such sums and securities as the ordinance may prescribe, which bonds must be approved by the council and filed with the city clerk, except the bond of the city clerk, which must be filed with the city treasurer, and no officer must become surety upon the official bond of another.

History: En. Sec. 4762, Pol. C. 1895; re-en. Sec. 3238, Rev. C. 1907; re-en. Sec. 5017, R. C. M. 1921.

Operation and Effect

Money collected from gambling houses and brothels by city officers, and receipted for by the treasurer, was held to have

been received for the city, though such money was illegally collected, and the failure of the treasurer to pay it over to his successor in office was a breach of his official bond, for which his sureties were liable. *City of Philipsburg v. Degenhart*, 30 M 299, 303, 76 P 694.

5018. Salaries must be fixed. The council must, by ordinance, fix the salaries and compensation of the city officers, policemen, and other employees, which must not exceed the amount specified in this code.

History: En. Sec. 4763, Pol. C. 1895; re-en. Sec. 3239, Rev. C. 1907; re-en. Sec. 5018, R. C. M. 1921.

5019. Salaries and qualifications of mayor and aldermen. The annual salary of a mayor of a city of the first class must not exceed four thousand dollars; and the annual salary of the mayor of a city of the second class must not exceed two thousand dollars; and the annual salary of the mayor of a city of the third class must not exceed six hundred dollars; and each alderman in a city of the first class may be allowed and paid not exceeding six dollars per diem, to be fixed by ordinance, for each day of session held by city council; provided, that no alderman shall be paid for more than five days' service during any one month; and aldermen of cities of the second and third class may be allowed and paid not exceeding three dollars per diem for each day of session, to be fixed by ordinance, but no alderman shall be paid for more than two days' service during any one month. No salary or compensation shall be allowed to the mayor or alderman of a town. No person shall be elected to the office of mayor or alderman in any city who is not a resident and freeholder within the limits of the city.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921.

5020. Salaries of police judges. The annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class, with a population in excess of fifty thousand inhabitants, must not exceed, for all services rendered, three thousand dollars; and in a city of the second class must not exceed fifteen hundred dollars; and in a city of the third class must not exceed six hundred dollars, and, in addition, a police judge is entitled to receive in all civil cases the fees which are now or may hereafter be allowed justices of the peace. In all criminal actions or proceedings arising under the criminal laws of the state, when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever; provided, however, that none of the provisions of this act shall affect cities operating under the commission form of government.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R. C. M. 1921.

Operation and Effect

It was held under this section, prior to its amendment, that a police judge is not entitled to collect fees in cases arising out of violations of city ordinances, either

from the city or from the defendant. *State ex rel. Rowe v. District Court*, 45 M 205, 209, 122 P 270.

References

Cited or applied as section 3241, revised codes, before amendment, in *State ex rel. Rowe v. District Court*, 44 M 318, 322, 119 P 1103.

5021. Compensation of justices of the peace acting as police judge. In towns, the council may designate a justice of the peace of the township in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party.

History: En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R. C. M. 1921.

Operation and Effect

A justice of the peace, acting as police judge, has exclusive jurisdiction in all cases arising under the ordinances, in addition to his jurisdiction as a justice. The two jurisdictions are separate and distinct, however, because he can act as police judge only by virtue of his designation under the statute and by the mode of procedure provided for that purpose. *State ex rel. Streit v. District Court*, 45 M 375, 380, 123 P 405.

A justice of the peace has no jurisdiction over cases arising under town ordin-

ances, except where he may have been designated under this section to act as police judge, in which event failure to style himself "police judge," instead of "justice of the peace," is a mere irregularity insufficient to divest him of jurisdiction. *Grant v. Williams*, 54 M 246, 252, 169 P 286.

Id. In an action for malicious prosecution against a justice of the peace, by a person aggrieved by an act of such justice acting in the designated capacity of police judge, it must be alleged that such officer had not been designated to act as police judge; otherwise the presumption will prevail that official duty was regularly performed.

5022. Salary of treasurer. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed three thousand dollars, in cities of the second class must not exceed two thousand dollars, and in cities of the third class it must not exceed seven hundred dollars, and in towns it must not exceed five hundred dollars.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R. C. M. 1921.

5023. Salary of city attorney. The annual salary and compensation of the city attorney must be fixed by ordinance, and must not exceed, in cities of the first class, three thousand dollars, and in cities of the second class must not exceed fifteen hundred dollars, and in cities of the third class must not exceed five hundred dollars, which compensation shall be in full for all services rendered in any capacity, and no fee, percentage, or additional compensation must be given to or allowed him.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R. C. M. 1921.

5024. Salary of chief of police. The annual salary and compensation of the chief of police must be fixed by ordinance, and must not exceed,

in cities of the second class, one hundred and fifty dollars per month, and in cities of the third class not to exceed one hundred and twenty-five dollars per month.

History: En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R. C. M. 1921.

5025. Salary of city clerk. The annual salary and compensation of the city clerk must be fixed by ordinance, and in cities of the first class must not exceed twenty-four hundred dollars, which is for all services rendered by him in any capacity; in cities of the second class must not exceed fifteen hundred dollars; in cities of the third class must not exceed twelve hundred dollars, which compensation, for cities of the second and third class, includes services rendered by him as city attorney; and in towns must not exceed three hundred dollars, which includes all services rendered by him in any capacity; provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921.

5026. Salary must not be increased or diminished during term. The salary and compensation of an officer must not be increased or diminished during his term of office.

History: En. Sec. 4771, Pol. C. 1895; re-en. Sec. 3247, Rev. C. 1907; re-en. Sec. 5026, R. C. M. 1921.

References
Broadwater v. Kendig et al., 80 M 515, 520, 261 P 264.

5027. Constitutional oath of office must be taken. Before entering upon office all officers, elected or appointed, must take and subscribe the constitutional oath of office.

History: En. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907; re-en. Sec. 5027, R. C. M. 1921.

State ex rel. Wilson v. Willis, 47 M 548, 554, 133 P 962.

Operation and Effect

The official oath in writing of an alderman, when taken and subscribed, is intended to become a record of the city.

References

Cited or applied as section 3248, revised codes, in State ex rel. Bennetts v. Duncan, 47 M 447, 453, 133 P 109.

5028. Duties and compensation of other officers. The duties and compensation of the street commissioners, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

History: En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R. C. M. 1921.

References

Cited or applied as section 3258, revised codes, in State ex rel. Quintin v. Edwards, 38 M 250, 269, 99 P 940.

CHAPTER 382

EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

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| Section 5029. | Executive officers. |
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- 5034. Duties of city treasurer.
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5029. Executive officers. The executive officers of a city or town are the mayor, marshal, and such officers for the assessment, collection, auditing, safe-keeping, and disbursing the revenue, and keeping the records and journals of the city or town, as the council may provide.

History: En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907; re-en. Sec. 5029, R. C. M. 1921. Cal. Pol. C. Sec. 4385.

5030. Powers of mayor. The mayor is the chief executive officer of the city or town, and has power:

1. To nominate, and, with the consent of the council, to appoint all non-elective officers of the city or town, provided for by the council, except as provided in this title.

2. To suspend, and, with the consent of the council, to remove any non-elective officer, stating in the suspension or removal the cause thereof.

3. To cause the ordinances of the city or town to be executed, and to supervise the discharge of official duty by all subordinate officers.

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city or town, with such recommendations as he may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as he deems expedient.

6. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet his approbation, to return the same to the next regular meeting of the council, with his objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. To veto any objectionable part of a resolution or ordinance, and approve the other parts. If the mayor fail to return any resolution or ordinance as aforesaid, the same takes effect without further action.

8. To call special meetings of the council, and when so called he must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

9. To cause to be presented, once in three months, a full and complete statement of the financial condition of the city or town.

10. To bid in for the city or town any property sold at a tax or judicial sale, where the city or town is a party or interested.

11. To procure and have in his custody the seal of the city or town.

12. To take and administer oaths.

13. To call on every male citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid him in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

14. To require of any of the officers of a city or town an exhibit of his books and papers.

15. To grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in his judgment public justice would be thereby subserved; but he must report all pardons granted, with the reasons therefor, to the next council.

16. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

17. He has such power as may be vested in him by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

History: Ap. p. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R. C. M. 1921. Cal. Pol. C. Sec. 4386.

Subdivision 1, Appoint Non-Elective Officers

In so far as the method of appointment of members of the police force is concerned, this section is repealed by section 5108. State ex rel. Wynne v. Quinn, 40 M 472, 480, 107 P 506.

The town clerk is an appointive officer, and the mayor of a city or town has power "to nominate, and, with the consent of the council, to appoint all non-elective officers of the city or town, provided for by the council." The power to nominate to fill a non-elective office also includes like authority when a vacancy arises therein; but in either event the appointment is not effective until concurred in by a majority of the city or town council. State ex rel. Peterson et al. v. Peck, 91 M 5, 7, 4 P 2d 1086.

The nominee of a mayor for a city office (city engineer) who fails of confirmation by a majority of the city council as required by statute and ordinance does not assume the status of an officer. State ex rel. Sandquist v. Rogers, 93 M 355, 361, 18 P 2d 617.

Subdivision 2, Suspension and Removal

The power of suspension and removal, granted the mayor by the second subdivision of this section, is taken from him by section 5108. State ex rel. Quintin v. Edwards, 38 M 250, 270, 99 P 940.

Subdivision 8, Special Sessions

It is not necessary, in order to convene

the council in special session, that a formal proclamation be issued by the mayor, or that notice shall be given. The law does require that the mayor shall deliver to the council a message stating the object of the meeting. O'Brien v. Drinkenberg, 41 M 538, 546, 111 P 137.

In an injunction suit to restrain the payment of municipal funds for work done in repairing sidewalks, one ground of the complaint in which was that though the meeting of the council at which the walk was ordered replaced was a special one, it was held without any notice, proclamation, or message of the mayor, as required by the eighth subdivision of this section, the plaintiff had the burden of proving that the meeting was a special one. O'Brien v. Drinkenberg, 41 M 538, 543, 111 P 137.

Status of Mayor Generally

While the mayor of a city is not, strictly speaking, a member of the council in the sense than an alderman is, yet he is such to the extent of the powers committed to him. (This section and the next). State ex rel. O'Hern v. Loud, 92 M 307, 311, 14 P 2d 432.

Id. Held, in quo warranto proceedings, under section 5031, providing that the mayor of a city shall be the presiding officer of the council and decide by his vote all ties, that where the council was evenly divided on the question of confirmation of the mayor's appointee to the office of city attorney, he had the right to cast the decisive vote.

References

State ex rel. Morgan v. Knight, 76 M 71, 78, 245 P 267.

5031. Mayor to preside, sign warrants, etc. The mayor is the presiding officer of the council, must sign the journals thereof and all warrants on the city treasurer, and decide by his vote all ties, and has no other vote.

History: En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907; re-en. Sec. 5031, R. C. M. 1921.

Operation and Effect

Under the law as it existed in 1895, the mayor was deemed to be a constituent

part of the council, and, where there was a tie vote of the aldermen on the confirmation of an officer, he had the right to vote for confirmation. State ex rel. Young v. Yates, 19 M 239, 241, 47 P 1004.

While the mayor of a city is not strictly speaking a member of the council in the sense that an alderman is, yet he is

such to the extent of the powers committed to him. State ex rel. O'Hern v. Loud, 92 M 307, 308, 14 P 2d 432.

References

Cited or applied as section 3251, revised codes, in O'Brien v. Drinkenberg, 41 M 538, 543, 111 P 137.

5032. Council to elect president. The council may elect a president, who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor, and in the absence of the president the council may appoint one of its number to act in his place.

History: En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907; re-en. Sec. 5032, R. C. M. 1921.

Operation and Effect

The council may or may not elect a president. When elected, he must be held to know whether provision has been made for his compensation; if none has been made in the mode prescribed by law, then he is entitled to none, and has no legal claim against the city therefore. McGillie v. Corby, 37 M 249, 255, 95 P 1063.

Where accountants are employed to

audit the books of a city and their contract calls for a report to the city, but before it is made two copies thereof are handed to the mayor, at his request, one of which he presents to the city council, and the other he receives as his own, the mayor's duty is fully discharged, after seeing that the copy presented to the council finds its way into the hands of the city clerk, and is by him filed among the records of his office; the mayor has a right to retain the other copy among his private papers. City of Butte v. Nevin, 46 M 380, 383, 128 P 600.

5033. Duties of clerk. It is the duty of the clerk:

1. To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, by-laws, resolutions, and contracts passed, adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

2. To enter in a book all ordinances, resolutions, and by-laws passed and adopted by the council. Such book is called "The Ordinance Book."

3. To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury; such book is called "The Finance Book."

4. To countersign and cause to be published or posted, as provided by law, all ordinances, by-laws, or resolutions passed and adopted by the council.

5. To file and keep all records, books, papers, or property belonging to the city or town, and to deliver the same to his successor when qualified.

6. To make and certify copies of all records, books, and papers in his possession, on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury.

7. To give notice of all elections as required by law, and to notify all persons of their election or appointment to office.

8. To make and keep a complete index of the journal ordinance book, finance book, and all other books and papers on file in his office.

9. To perform such duties in and about the assessment, levy, and collection of taxes and assessment as may be prescribed by law or ordinance.

10. To take and administer oaths, but must not charge or receive any fees therefor.

11. To certify to the county clerk, within ten days after their election and qualification, the names and terms for which they are elected, of the mayor, city clerk, and city treasurer.

12. To perform such other and further duties as the council may prescribe.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R. C. M. 1921. Cal. Pol. C. Sec. 4393.

Operation and Effect

The presentation of protests or objections against the creation of special improvement districts is no part of the duties of the city clerk, and the leaving of such protests at the clerk's office is of no avail. *Hensley v. City of Butte*, 36 M 32, 38, 92 P 34. Compare *Tiggerman v. City of Butte*, 44 M 138, 142, 119 P 477.

The mayor of a city in this state is not required to keep a record of his official acts. The duty to keep the files and records of the city appertains to the clerk, who is bound to deliver them to his successor. *City of Butte v. Nevin*, 46 M 380, 383, 128 P 600.

If a person has been lawfully elected a member of the city council, and has taken the required oath, the intention of the law is that the oath, when taken and subscribed, shall become a record of the city, and it is the clerk's duty to file

and keep it as such. It is also the clerk's duty to record the newly elected officer's vote on a question; and the performance of the clerk's duty, in either respect, may be enforced by mandamus. *State ex rel. Wilson v. Willis*, 47 M 548, 554, 133 P 962.

If the mayor chooses to keep a record including copies of documents which must be preserved in the files of the clerk's office, they are his private property, and title to them does not vest in the city by virtue of the fact that he is acting as its chief executive at the time. *City of Butte v. Nevin*, 46 M 380, 383, 128 P 600.

Under the circumstances, the relators' remedy was by writ of mandate to compel the mayor to nominate a person acceptable to the council as town clerk, who then would be entitled to the custody of the books and records of the town, under this section, subd. 5. *State ex rel. Peterson et al. v. Peck*, 91 M 5, 7, 4 P 2d 1086.

References

Cited or applied as section 3253, revised codes, in *Harvey v. Town of Townsend*, 57 M 407, 188 P 879.

5033.1. Financial statement of city or town—contents—copies, to whom furnished. Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town in this state must make out, in triplicate, a full and complete statement of the financial condition of the city or town for such fiscal year, showing:

1. The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

2. The amount of money received from taxes upon real and personal property;

3. The amount of money received from fines, penalties and forfeitures;

4. The amount of money received from licenses;

5. The amount of money received from all other sources, each source and the amount received therefrom being shown separately;

6. For each fund the amount of money, if any, on hand at the beginning of such fiscal year, the amount received by and the amount paid out during such fiscal year. The total amount of money paid out must be deducted from the sum of money on hand at the beginning of the fiscal year and money received during such year by the city or town treasurer, and a balance must be struck for each fund;

7. A concise description of all property owned by the city or town with an approximate estimate of the value thereof;

8. The rates of taxation and purposes for which levied for such fiscal year;

9. Such other information as may be, from time to time, required by the state examiner;

The forms on which such statements shall be made shall be prescribed by the state examiner.

The city or town clerk must, not later than the 31st day of August following the close of each fiscal year, transmit one copy of such statement to the state examiner and one copy thereof to the state board of equalization, and must present the third copy thereof to the city or town council, or commission, at the first regular meeting thereof in the month of September.

The city or town clerk shall not receive any salary or compensation for the month of August, or for any month thereafter, until he shall have filed in his office receipts from the state examiner and state board of equalization that such copies have been received and filed.

History: En. Sec. 1, Ch. 24, L. 1927.

5034. Duties of city treasurer. It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city or town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

2. To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city or town, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

5. To keep a separate account of each fund or appropriation, and the debits and credits thereof.

6. To give every person paying to him money as treasurer, a receipt therefor, specifying the date of payment, the amount, and for what paid.

7. To render at any time an account to the council, showing the money on hand and the condition of the treasury.

8. To keep a register of all warrants paid, called "The Registry Book," which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid, and to deliver and file with the city clerk all vouchers, warrants, or orders paid by him.

9. To annually make out and submit to the city council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city or town, or, if none is published, such abstract must be posted in the room or building occupied by the council.

10. To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

11. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city or town, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R. C. M. 1921. Cal. Pol. C. 4392.

Deposit of Public Moneys

Under former statutes it was held that a city treasurer, who was obliged by law of the state and an ordinance of the city to keep the funds of the city on deposit, if he used reasonable prudence and caution in selecting the bank, and was without fault or negligence in keeping his deposit, was not liable for a loss occasioned by the failure of the bank in which he deposited the money. *City of Livingston v. Woods*, 20 M 91, 102, 49 P 437. Compare *Commissioners of Jefferson County, v. Lineberger*, 3 M 231, 239.

Under this section, the city treasurer must deposit public moneys in such bank or banks as the city council shall designate, and under section 5036, he must take from the banks such security as the city council may prescribe, approve and deem fully sufficient to insure the safety of deposits made by him. A city treasurer complied with the foregoing provisions; the city council deemed a bond in the sum of \$15,000 sufficient to safeguard the deposits made by him though they exceeded at times the amount of the bond. At the time the designated city depository closed its doors its deposits

did exceed the amount of the bond. Held, in a proceeding against the receiver of the insolvent bank to have the excess declared a preferred claim on the ground that it had been unlawfully deposited with the knowledge of the bank and therefore it became a trust fund, that, the treasurer having complied with the statutory requirements, the city must be deemed to have consented to the deposits as made, that they were legally made and that therefore they were general in character and hence that the city was not entitled to a preference. *City of Missoula v. Dick et al.*, 76 M 502, 507, 248 P 193.

Reports of Moneys Received and Disbursed

In an action by a city against the sureties on the official bond of the treasurer, reports of the treasurer to the city council of moneys received and disbursed during the month, made under this section, may be given in evidence against such sureties, and are prima facie true, and, when not contradicted by the sureties, are binding on them. *City of Philipsburg v. Degenhart*, 30 M 299, 304, 305, 76 P 694.

References

State v. McNamer, 62 M 490, 495 et seq., 205 P 951; *State ex rel. Riley v. McCarthy*, 78 M 164, 253 P 311; *State ex rel. Clark v. Bailey*, 99 M 484, 44 P 2d 740.

5035. Transfer of municipal funds—how made. No money must be transferred from one fund to another, except by ordinance or resolution of the council.

History: En. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5035, R. C. M. 1921.

5036. Repealed—Chapter 89, laws of 1923.

5037. Duties of chief of police. It is the duty of the chief of police:

1. To execute and return all process issued by the police judge, or directed to him by any legal authority, and to attend upon the police court regularly.

2. To arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance, and bring them before the police judge for trial.

3. To have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all de-

linquencies or neglect of duty or official misconduct of policemen for action of the council.

4. The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

5. To perform such other duties as the council may prescribe.

History: En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907; re-en. Sec. 5037, R. C. M. 1921.

Operation and Effect

The chief of police is a policeman or police officer in the same sense as is an ordinary policeman. When the circumstances demand it, he is required to perform all the duties of the ordinary policeman, for, though he has the additional

duty of supervision and control of the entire force, this does not lessen or abridge the duties which are enjoined upon all police officers under the general laws of the state. State ex rel. Wynne v. Quinn, 40 M 472, 475, 107 P 506.

References

State ex rel. Marquette v. Police Court, 86 M 297, 310, 283 P 430.

5038. Qualifications, term of office, and duties of city attorney. The city attorney to be appointed shall be a person who has been licensed to practice as an attorney in this state. He shall hold his office for two years, unless suspended or removed as provided by this act. It shall be the duty of the city attorney to attend before the police court and other courts of the city and the district court, and prosecute on behalf of the city, and he shall generally do and perform such other acts as pertain to the office of the city or corporation council. He shall, when required, draw for the use of the council contracts and ordinances for the government of the city, and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the corporation. For such services he shall receive such salary and fees as may be fixed by the city council by ordinance. Nothing herein shall be taken or construed as preventing the city council from employing other and additional council in special cases, and providing for the payment of such services. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by this act, or the ordinances of the city.

History: Ap. p. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R. C. M. 1921. Cal. Pol. C. Sec. 4391.

References

State ex rel. Morgan v. Knight, 76 M 71, 75, 245 P 267.

CHAPTER 383

LEGISLATIVE POWERS—POWERS OF CITY COUNCILS—ORDINANCES— INITIATIVE AND REFERENDUM

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5039. Powers of city councils. The city or town council has power: To make and pass all by-laws, ordinances, orders, and resolutions, not repugnant to the constitution of the United States or of the state of Montana, or of the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

History: Ap. p. Sec. 325, 5th Div. p. 203, L. 1897; re-en. Sec. 3259, Rev. C. Comp. Stat. 1887; amd. Secs. 3, 4 and 5, p. 1907; re-en. Sec. 5039, R. C. M. 1921; amd. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, 20, L. 1927. Cal. Pol. C. Sec. 4408.

NOTE.—Sec. 5039 as it existed in the 1921 code, contained all the powers of the city council and had 84 subdivisions. For convenience' sake, these have been divided up and will be found as sections 5039-5039.83.

General Welfare Clause

The business of conducting a rooming-house, though a legitimate one, is so far concerned with the health, morals and welfare of the public that it is within the police power of a city to regulate it under the authority conferred by this section, denominated the "general welfare clause," State ex rel. Altop v. City of Billings et al., 79 M 25, 32 et seq., 255 P 11.

Id. A city ordinance which vests in its officials a discretion to grant or refuse to grant a license to carry on a lawful business, to be valid, need not, where the ordinance relates to the administration of a police regulation necessary to protect the general welfare, morals and safety of the public, prescribe all the conditions upon which such license shall be granted or refused; the fact that in instances it may be exercised arbitrarily, in the absence of specific directions, not being an argument against its validity, since in such a case the person discriminated against may apply to the courts for relief.

Notwithstanding repeal of the state prohibition laws, a city has the power to prohibit by ordinance, traffic in intoxicating liquors under its general powers granted it by this section, and the specific provision of section 5039.25 under which it may pass ordinances to prevent acts or conduct calculated to disturb the public peace or which are offensive to public morals. State ex rel. Moreland v. Police Court, 87 M 17, 22, 285 P 178.

NOTE.—Sections 5039-5039.83 were all listed as section 5039 in the revised codes of 1921, making in all 84 subdivisions to that section. The following annotations were made dealing with all the powers of the city council. These annotations were made with no reference to any particular subdivision of section 5039 of the 1921 code. They are placed here for convenience but also should be considered in connection with the next 83 sections.

Powers in General

The council is the governing body of the municipality, and, as such, is given the exclusive control of streets and highways. Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; Ford v. City of Great Falls, 46 M 292, 305, 127 P 1004.

As a city council has, under this section and section 5079, the sole power to determine the amount that shall be expended in carrying on the city government, it, and not the mayor, has the power to reduce the police force for economical rea-

sons, or when it becomes unnecessarily large. State ex rel. Rowling v. Mayor of Butte, 43 M 331, 336, 117 P 604.

Under its general legislative power the council of a city or town may provide for the appointment of as many policemen, including a chief of police in case of a city, and a marshal in case of a town, as may be necessary to preserve the peace and enforce the ordinances. Grush v. Bishop, 46 M 97, 99, 126 P 619.

The frequent use, in the laws of this state, of the prefix "street," before "railroads" or "railways," indicates the legislative intention to maintain a distinction between railroads and street railroads, and suggests that, in construing enactments touching railroads, they should not be held to apply to street railroads unless the intention that they should so apply is apparent. Helena etc. Ry. Co. v. City of Helena, 47 M 18, 34, 130 P 446.

When a city is engaged in operating a municipal plant, under an authority granted by general law, it acts in a proprietary or business capacity, and stands upon the same footing as a private individual or business corporation similarly situated. Milligan v. City of Miles City, 51 M 374, 384, 153 P 276.

Id. Where a city was authorized to conduct an electric light and power plant, it could lay a main to heat a building by the waste steam from the plant, and incidentally furnish steam for heat to private buildings abutting on the main.

Id. A city has the power to install at public expense a lighting plant to supply light not only for its public buildings and streets, but also for use by its inhabitants.

A city has no inherent power to levy taxes on property within its corporate limits, its power in that respect being limited to that conferred by statute, which must be strictly construed. First Nat. Bank of Glendive v. Sorenson, 65 M 1, 8, 210 P 900.

The statute creating a municipality, or under which it exists, is the charter of its powers, and it has only such authority as is conferred expressly and such as is necessarily implied or is indispensable in order properly to accomplish the purpose of its organization. State ex rel. City of Butte v. Police Court, 65 M 94, 97 et seq., 210 P 1059.

In grants of authority to municipal corporations, authority to commit a nuisance will not be implied but must be expressed, since in the use of their private property they are subject to the same rules as private individuals, and when the use and enjoyment of a legislative grant does not necessarily and naturally create a nuisance, but the nuisance results from the method of the use and enjoyment, the grant constitutes no defense. Lennon et

al. v. City of Butte, 67 M 101, 105, 106, 214 P 1101.

Laws enacted in the exercise of the police power, whether by municipal corporations acting in pursuance of the laws of the state or by the state itself, must be reasonable, and are always subject to the provisions of both the federal and state constitutions and judicial scrutiny. *Betty v. City of Sidney*, 79 M 314, 318, 257 P 1007.

Id. The question of the reasonableness of an ordinance is, in the first instance, for the determination of a city or town council, and in the absence of a clear showing to the contrary its reasonableness will be presumed.

Held, that the powers of a city operating under the commission-manager plan granted by section 5409, with respect to punishments of violations of its ordinances, are the same as and no greater than those granted by this section to cities generally. *City of Bozeman v. Merrell*, 81 M 19, 25, 28, 261 P 876.

5039.1. Levy and collection of taxes. The city or town council has power: To levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

History: En. Subd. 2, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.2. Licenses—requirements. The city or town council has power: To license all industries, pursuits, professions, and occupations, and to impose penalties for failure to comply with such license requirements.

History: En. Subd. 3, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

License of Industry, Etc.

Section 2328, requires every coal dealer in the state to pay annually to the state a license of one dollar and in addition thereto five cents per ton for every ton of coal sold by him during any one year upon which the mine license fee exacted by section 2317 has not been paid by the mine operator. Under this section the power of cities or towns to license an industry or business is limited to an amount of not to exceed the sum required by the state to be paid to it by the same business. Held, that a city ordinance exacting a fee of one dollar from coal dealers and in addition five cents for every ton of coal sold, without incorporating therein the clause limiting the payment of the five cents to coal upon

References

Cited and construed as section 4800, political code, before amendment, in *Palmer v. City of Helena*, 19 M 61, 66, 47 P 209; *Jordan v. Andrus*, 27 M 22, 26, 69 P 118; as amended in *In re O'Brien*, 29 M 530, 540, 75 P 196; *State ex rel. Tel. Co. v. Mayor of Red Lodge*, 30 M 338, 343, 76 P 758; as section 3259, revised codes, in *State ex rel. Quintin v. Edwards*, 38 M 250, 266, 99 P 940; as laws of 1897, p. 203, in *Johnson v. City of Great Falls*, 38 M 369, 370, 99 P 1059; as section 3259, revised codes, in *Barnard Realty Co. v. City of Butte*, 48 M 102, 111, 136 P 1064; *Kohn v. City of Missoula*, 50 M 75, 77, 144 P 1087; *Strettheimer et al. v. City of Butte*, 60 M 111, 116, 198 P 455; *City of Helena v. Helena Light & Ry. Co.*, 63 M 108, 119, 207 P 337; *State ex rel. Marquette v. Police Court*, 86 M 297, 309, 283 P 430; *Weber v. City of Helena et al.*, 89 M 109, 116 et seq., 297 P 455; *Weber v. City of Helena et al.*, 89 M 128, 297 P 464; *Campbell v. City of Helena*, 92 M 366, 378, 16 P 2d 1; *Marinkovich v. Tierney et al.*, 93 M 72, 87, 17 P 2d 93.

Operation and Effect

This section and city ordinances must yield to chapter 96, laws of 1923, fixing the time and method of collecting taxes and interest thereon. *Thomas v. City of Missoula et al.*, 70 M 478, 482, 226 P 213.

which the mine license fee exacted by section 2317 had not been paid to the state, was invalid as in excess of the power of the city to impose. *State ex rel. City of Butte v. Police Court*, 65 M 94, 97 et seq., 210 P 1059.

A city cannot raise revenue for general municipal purposes by the imposition of license taxes. *State v. Police Court*, 68 M 435, 445, 219 P 810.

Id. This section provides that the license fee which a city may impose upon industries and businesses must not exceed the sum required by statute when the state requires a license therefor. Chapter 154, laws of 1923, while authorizing the state railroad commission to require the payment of a license not to exceed \$10 per motor vehicle, does not declare that a license shall be exacted. A city imposed a license fee of \$25 for the first taxi operated for hire and \$12 for each additional one. Held, that in the absence of a showing that the

railroad commission had exercised the power given it by chapter 154, the fee exacted by the city council cannot be said to exceed the fee imposed by the state for the same purpose.

While the legislature may not constitutionally authorize a city to provide revenue for general municipal purposes by the imposition of license taxes, it may properly authorize it to impose such a tax upon any industry or upon the right to transact any business which falls within

the scope of police regulations. *City of Bozeman v. Nelson*, 73 M 147, 153 et seq., 237 P 528.

Id. Although revenue may result incidentally from an undisputed exercise of the police power, that fact alone does not divest the regulation of its police character and make it an exercise of the taxing power.

Id. Taxicabs and auto-busses operated for hire are legitimate objects of license fees.

5039.3. Issuing licenses. The city or town council has power: To fix the amount, terms and manner of issuing and revoking licenses; but the council may refuse to issue licenses when it may deem it best for the public interests.

History: En. Subd. 4, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.4. Building or hiring and lighting and heating buildings for municipal purposes. The city or town council has power: To build or hire all necessary buildings for the use of the city or town, and to heat and light the same.

History: En. Subd. 5, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.5. Streets, alleys, sidewalks, parks and public grounds. The city or town council has power: To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks, and public grounds and vacate the same.

History: En. Subd. 6, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.6. Lighting and cleaning streets—regulation of sidewalks—removal of offensive material from public ways and grounds—tax levy. The city or town council has power: To provide for lighting and cleaning the streets, alleys, and avenues; to regulate the use of sidewalks, and to require the owners of the premises adjoining to keep the same free from snow or other obstruction; to regulate the disposition and removal of ashes, garbage, or other offensive matter in any street, alley, or on public grounds or on any premises, and to provide for levying the cost of such removal as a special tax against the property from which such matter was deposited.

History: En. Subd. 7, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Operation and Effect

Under an ordinance making it the duty of the occupant of premises to keep the adjoining sidewalks free from snow, ice, etc., the city has a right to proceed against the occupant, as well as the owner, whose duty in this respect is laid down in this section. The remedy against the occupant is merely cumulative, and its assertion is not inconsistent with the exercise of the power granted in this section. *City of Helena v. Kent*, 32 M 279, 288, 80 P 258.

Held, that while this section gives a city the power to regulate the removal and disposition of garbage, it does not give it the right to so deposit it as to create a condition injurious to health or offensive to the senses and thus interfere with the comfortable enjoyment of life and property. *Lennon et al. v. City of Butte*, 67 M 101, 105, 106, 214 P 1101.

A city ordinance which requires property owners to keep the sidewalks in front of their premises free from ice and snow under penalty of a fine is not intended for the protection of the individual by the owner, but as an aid to the city in discharging its primary duty in that behalf, such an ordinance but making the owner a

joint agent with city employees in performing that duty, and therefore failure to comply with its requirements, with consequent injury to a pedestrian, does not

give rise to a cause of action against the property owner. *Childers v. Deschamps et al.*, 87 M 505, 513, 290 P 261.

5039.7. Regulation of public ways and grounds—obstructions to be prevented. The city or town council has power: To provide for and regulate street crossings, curbs, and gutters; to regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

History: En. Subd. 8, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.8. Traffic and sales on public ways and grounds. The city or town council has power: To regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds.

History: En. Subd. 9, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.9. Speed regulation. The city or town council has power: To regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town.

History: En. Subd. 10 Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.10. Railroads—regulation of use and speed. The city or town council has power: To regulate and control the laying of railroad tracks, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

History: En. Subd. 11, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.11. Lighting of railroad tracks—crossings—enforcement of requirements. The city or town council has power: To require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location of the lamp posts, and to require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the said track intersects or crosses any street, alley, or public highway, or runs along the same, and to fix and determine the size and kind of such crossing and the grades thereof; and, in case the owner of such railroads fails to comply with such requirements, the council may cause the same to be done, and it may assess the expense thereof against such owner, and the same constitutes a lien on any property belonging to such owner within such city or town, and may be collected as other taxes.

History: En. Subd. 12, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Crossings and Lighting Railroad Tracks

This section does not apply to street railroads; hence an ordinance requiring a

street railway company to light its track within the corporate limits, without expense to the city, is void. *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 37, 130 P 446.

Before a city may exercise the power conferred by this section, to order the construction of a subway street crossing ne-

cessitating a change in the grade of the street, it must comply with the provisions of section 5039.67 and section 5300, they being limitations upon the exercise of its

police power in that behalf. *State v. Northern Pac. Ry. Co.*, 88 M 529, 545, 295 P 257.

5039.12. Street railroads—authorization and regulation. The city or town council has power: To license and authorize the construction and operation of street railroads, and require them to conform to the grade of the street as the same are or may be established.

History: En. Subd. 13, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

the general provision contained in section 5039, confers all the powers necessary for the policing of street railroads. *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 37, 130 P 446.

Street Railroads

This section, taken in connection with

5039.13. Numbering of houses and lots. The city or town council has power: To regulate the numbering of houses and lots, and to change the same.

History: En. Subd. 14, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.14. Water regulation. The city or town council has power: To provide for the cleaning of waters, water-courses, and streams within the city, or to alter, straighten, or widen the same, and the draining and filling in of ponds, wells, or shafts on private property, when necessary to the public health or public welfare.

History: En. Subd. 15, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.15. Licensing, taxing and regulation. The city or town council has power: To license, tax, and regulate auctioneers, peddlers, pawn-brokers, second-hand and junk shops, drivers, porters, pool halls and soft drink parlors, billiard tables, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusements within the city or town; provided, that the power to license, tax, and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

History: En. Subd. 16, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

regulation of it, authorized by this section. *City of Butte v. Paltrovich*, 30 M 18, 21, 75 P 521.

Business Regulations

An ordinance making it unlawful to keep open a pawn-shop after six o'clock p. m. is not a prohibition of the business, but a

Id. The power conferred upon a city by this section is primarily to enact such police regulations, with reference to the occupations therein enumerated, as shall be necessary to the good order and general welfare of its citizens.

5039.16. Records of pawn, second-hand and junk shops, requirement of. The city or town council has power: To require the owners and keepers of pawn, second-hand, and junk shops to keep a record of all articles purchased or pawned to them, which record, and the articles purchased or pawned, are subject to the inspection of all police officers of the city or town.

History: En. Subd. 17, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.17. Regulation of purchases from minors by pawn, second-hand and junk shops. The city or town council has power: To prevent the keepers of pawn, second-hand, and junk shops from the purchasing of any article from a minor, without the written consent of the parent or guardian of such minor.

History: En. Subd. 18, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.18. Regulation of dances. The city or town council has power: To regulate or prohibit dance houses within the city or town limits, and within three miles thereof.

History: En. Subd. 19, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.19. Suppression of fraud and immoral publications. The city or town council has power: To suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property, and to prohibit the same or exhibition of immoral publications, prints, pictures or illustrations.

History: En. Subd. 20, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.20. Establishment and supervision of markets. The city or town council has power: To establish markets and market houses, and provide for the supervision and use thereof.

History: En. Subd. 21, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.21. Inspection of foodstuffs. The city or town council has power: To provide for and regulate the inspection of beef, pork, flour, meal, and all provisions, oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

History: En. Subd. 22, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.22. Weighing, measuring and inspecting. The city or town council has power: To regulate the inspection, weighing, and measuring of wood, coal, stone, corn, or other grain, and hay, within the city or town.

History: En. Subd. 23, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.23. Regulation of vaults, cisterns, hydrants, pumps, sewers and gutters. The city or town council has power: To regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

History: En. Subd. 24, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.24. Prevention of and punishment for disturbing the peace. The city or town council has power: To prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof.

History: En. Subd. 25, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Protect Public Morals

Notwithstanding repeal of the state prohibition laws, a city has the power to prohibit by ordinance, traffic in intoxicating

liquors under its general powers granted it by section 5039 and the specific provision of this section thereof under which it may pass ordinances to prevent acts or conduct calculated to disturb the public peace or which are offensive to public morals. State ex rel. Moreland v. Police Court, 87 M 17, 22, 285 P 193.

5039.25. Limitation of combustible buildings—fire limits. The city or town council has power: For the purpose of guarding against fire, to prescribe the limits within which wooden or combustible buildings must not be erected, placed, or repaired, and to establish fire limits within the city or town.

History: En. Subd. 26, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Fire Protection

While a city or town may, under this section, by ordinance wholly forbid the erection of wooden buildings within fire limits, it is without power to wholly prohibit the repair of a building lawfully erected prior to the creation of fire limits

including the building therein, an ordinance so declaring being unreasonable. Betty v. City of Sidney, 79 M 314, 318, 257 P 1007.

Measures for the protection of life and property against fire hazards fall within the police power of the state, which power may either be exercised by the state through proper machinery or delegated for local administration to cities or towns. State ex rel. Brooks v. Cook, 84 M 478, 483, 276 P 958.

5039.26. Fire department—alarm—police telegraph. The city or town council has power: To establish a fire department, and prescribe and regulate its duties; to maintain a fire alarm and police telegraph.

History: En. Subd. 27, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.27. Provision for fire equipment. The city or town council has power: To erect engine, hose, and hook-and-ladder houses, and provide engines and other implements for the extinguishment of fire.

History: En. Subd. 28, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.28. Inspection and regulation of fire hazards. The city or town council has power: To inspect chimneys, flues, fireplaces, stove pipes, ruins, structures, and boilers, and, when dangerous, to require the same to be removed or put in order, and prohibit the use thereof until safe.

History: En. Subd. 29, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.29. Regulation of explosives and inflammable material. The city or town council has power: To regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, or other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine, and to prohibit the storage of the same within three miles of the city limits.

History: En. Subd. 30, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.30. Bonfires—pyrotechnics—toy pistols or guns—regulation by council. The city or town council has power: To regulate or prohibit the building of bonfires, the explosion, use or selling of fireworks, fire-crackers, torpedoes, or other pyrotechnics or toy pistols or guns within the city or town.

History: En. Subd. 31, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.31. Cruelty to animals. The city or town council has power: To prohibit and punish cruelty to animals.

History: En. Subd. 32, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.32. Abatement of and regulation concerning nuisances. The city or town council has power: To define and abate nuisances, and to impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control.

History: En. Subd. 33, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Nuisances

Under the rule of statutory construction that a specific provision is paramount to a general one, held, in a prosecution for

maintaining a nuisance, that the specific provision of this section, empowering a city to impose a fine upon persons maintaining a nuisance, is controlling, as against the power conferred by section 5039.47 to impose fines and penalties for the violation of a city ordinance generally, up to ninety days in jail. *City of Bozeman v. Merrell*, 81 M 19, 25, 28, 261 P 876.

5039.33. Vagrants and mendicants. The city or town council has power: To define vagrancy, and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

History: En. Subd. 34, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Vagrancy

City and town councils have express authority from the state to define and punish vagrancy under this section. *State ex rel. City of Butte v. District Court*, 37 M 202, 204, 95 P 841.

5039.34. Jail—maintaining and governing. The city or town council has power: To establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town; to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within three miles of the city.

History: En. Subd. 35, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.35. Animals running at large. The city or town council has power: To regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs, or other animals, and to authorize the impounding and sale thereof, if found at large contrary to ordinances.

History: En. Subd. 36, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.36. Licensing of dogs. The city or town council has power: To license the keeping of dogs, and to provide for the killing or destruction thereof, if found running at large without license.

History: En. Subd. 37, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.37. Obstructing streets, sidewalks and public grounds to be prevented. The city or town council has power: To prevent the incumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

History: En. Subd. 38, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.38. Sidewalks—prevention of animals or vehicles on—prevention of damage to. The city or town council has power: To prevent the riding or driving of animals, or the drawing or riding of vehicles of any kind on the sidewalks of the city, or the doing damage in any way to the sidewalks.

History: En. Subd. 39, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.39. Hitching of animals—racing and immoderate driving. The city or town council has power: To prevent horse racing, or immoderate driving or riding in the streets of the city or town, and to regulate and provide for the hitching of all animals on the streets.

History: En. Subd. 40, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.40. Regulation of coasting, skating, sliding and other amusements. The city or town council has power: To regulate or prohibit coasting, skating, sliding, or tobogganning on the streets or alleys, or the indulgence in other amusements dangerous or annoying to the inhabitants, or having a tendency to frighten animals.

History: En. Subd. 41, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.41. Location of businesses and factories. The city or town council has power: To regulate the location of slaughter houses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town, and to prohibit any offensive and unwholesome establishments within the city or town limits, or within three miles thereof.

History: En. Subd. 42, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.42. Erection of poles, wires, rods and cables. The city or town council has power: To regulate or suppress the erection of poles and the stringing of wires, rods, or cables, in the streets, alleys, or within the limits of any city or town.

History: En. Subd. 43, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Regulations as to Poles, Wires, Etc.

This section, at most, does not enable a corporation or individual wishing to engage in the telegraph or telephone business to do so. The provision only leaves it to the option of the cities and towns to legislate upon this subject, and, if they do not do so, they cannot be coerced into

acting any more than the legislature itself. State ex rel. Crumb v. City of Helena, 34 M 67, 73, 85 P 744.

The police powers granted to cities and towns by section 5039.7 and this section, relative to the regulation of the use of the streets by the erection of telegraph or telephone poles, the stringing of wires thereon, etc., are preserved to them by the concluding portion of section 6645. City of Butte v. Montana Independent Tel. Co., 50 M 574, 581, 148 P 384.

5039.43. Boards of health. The city or town council has power: To provide for a board of health, and to prescribe its powers and duties, and when such board of health is provided, for the same to have jurisdiction within the city or town limits, and within three miles thereof.

History: En. Subd. 44, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.44. Detention hospitals. The city or town council has power: To establish at a suitable place, within or without the limits of the city or town, in case of necessity, a hospital to prevent the spread of smallpox, or other contagious or infectious diseases, and to regulate the control thereof, and do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

History: En. Subd. 45, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.45. Cemeteries. The city or town council has power: To establish and regulate cemeteries, within or without the city or town, and acquire lands for this purpose, and prohibit the establishment of cemeteries within three miles of the city or town.

History: En. Subd. 46, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.46. Officers' and employees' duties and compensation. The city or town council has power: To fix compensation, and to prescribe the duties of all officers and other employees of the city or town, subject to the limitations mentioned in this code.

History: En. Subd. 47, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.47. Penalties for violations of ordinances—limitations. The city or town council has power: To impose fines and penalties for the violation of any city ordinance, but no fine or penalty must exceed three hundred dollars, and no imprisonment must exceed ninety days for any one offense.

History: En. Subd. 48, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

maintaining a nuisance, that the specific provision of section 5039.32, empowering a city to impose a fine upon persons maintaining a nuisance, is controlling, as against the power conferred by this section to impose fines and penalties for the violation of a city ordinance generally, up to ninety days in jail. *City of Bozeman v. Merrell*, 81 M 19, 25, 28, 261 P 876.

Penalties

Under the rule of statutory construction that a specific provision is paramount to a general one, held, in a prosecution for

5039.48. Poll tax—limitation on amount—work for failure to pay. The city or town council has power: To levy and collect annually from each able-bodied male resident of the city or town, between the ages of twenty-one and forty-five years, a poll-tax not exceeding three dollars per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

History: En. Subd. 49, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.49. Partition fence and party wall regulation. The city or town council has power: To regulate partition fences and party walls not already constructed.

History: En. Subd. 50, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.50. Construction specification—fire escapes. The city or town council has power: To prescribe the thickness, strength, and manner of

constructing stone, brick, and other buildings, and to order the construction of fire escapes thereon.

History: En. Subd. 51, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Buildings

Where defendants at considerable cost had practically completed a building to be used as a livery-stable within the residence portion of a city, whereupon an ordinance

was passed by the council requiring persons desiring to engage in such business to first obtain a permit, the same not being in terms applicable to livery-stables then in existence within the city limits, such ordinance was an unlawful discrimination between defendants and others engaged in the same business at the time of its enactment. *City of Billings v. Cook*, 35 M 95, 104, 88 P 656.

5039.51. Use of county jail. The city or town council has power: To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

History: En. Subd. 52, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.52. Workhouse—construction authorized—use. The city or town council has power: To erect and organize a workhouse in or near a city or town; and any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

History: En. Subd. 53, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.53. Licensing of vehicles and carriages—rates. The city or town council has power: To license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays, and to fix the rate to be charged for the carriage of persons and property within the city or town, and to the public works and property without the limits of the city or town.

History: En. Subd. 53, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Operation and Effect

An ordinance requiring taxicab drivers to occupy a position by the side of their vehicles along the curb line of the street fronting a railway station, and prohibiting them from soliciting patronage on rail-

way property, held a valid exercise of the police power as against the objections that it was in conflict with the due process of law clause of the federal and state constitutions, indirectly interfered with interstate commerce carried on partially within the state, and impaired the obligations of contracts between the operator of the taxicabs and railway companies. *City of Butte v. Roberts*, 94 M 482, 487, 23 P 2d 243.

5039.54. Fire hazardous manufactories—firearms—concealed weapons. The city or town council has power: To regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires, and to prevent and suppress the sale of firearms, and carrying of concealed weapons.

History: En. Subd. 55, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.55. Weights and measures—sealer. The city or town council has power: To establish standard weights and measures to be used in the city or town, and to provide for a sealer of standard weights and measures, who has jurisdiction within the city or town.

History: En. Subd. 56, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.56. Inspection and measuring of building materials. The city or town council has power: To provide for the inspection and measuring of lumber and other building materials.

History: En. Subd. 57, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.57. Arrest of persons. The city or town council has power: To make regulations authorizing the police of the city or town to make arrests of persons charged with crime, within the limits of the city or town and within five miles thereof, and along the line of water supply of the city or town.

History: En. Subd. 58, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.58. Planting and protection of trees. The city or town council has power: To provide for the planting of trees and the protection of the same.

History: En. Subd. 59, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.59. Reports of officers may be required. The city or town council has power: To require from an officer at any time a report in detail of the transactions in his office, or any matter connected therewith.

History: En. Subd. 60, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.60. Sale of poisons and opium. The city or town council has power: To regulate the sales of poisons, and to punish any person for selling or using opium, or any preparation thereof, or having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used. Druggists may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

History: En. Subd. 61, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.61. Disposal or lease of municipal property—approval of electors required for disposal or lease of lighting system. The city or town council has power: To sell, dispose of, or lease any property belonging to a city or town not held in trust for a specific purpose, and such transfer must be made by ordinance or resolution passed by a two-thirds vote of all the members of the council. To sell, dispose of, or lease any property belonging to a city or town not held in trust for a specific purpose, and such transfer must be made by ordinance or resolution passed by a two-thirds vote of all the members of the council, provided, however, that when it is for the best interest of the city or town and the residents thereof that any municipal lighting system or power plant, owned by the municipality and held in trust for a specific purpose, be sold or disposed of, the city council shall have power to fix and determine and declare the value thereof and to sell, lease and dispose of the same, such sale, lease or disposal to be approved by a majority vote of tax payers of such municipality cast at an election called for that purpose.

History: En. Subd. 62, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.62. Contracts. The city or town council has power: To make any and all contracts necessary to carry into effect the powers granted by this code, and to provide for the manner of executing the same.

History: En. Subd. 63, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Contracts

The mode of exercising the power granted by this section is subject to the limitation prescribed in that section of the code in reference to the awarding by municipalities of contracts exceeding a certain amount to the lowest responsible bidder; this limitation is, furthermore, exclusive, and applies to all municipal bodies. *Missoula St. Ry. Co. v. City of Missoula*, 47 M 85, 95, 130 P 771.

Under section 5039.72 and this section, a city may contract for rates with a public utility, subject, however, to the paramount

authority of the state to exercise its power in the premises whenever it chooses to do so. *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 110, 173 P 799.

The purpose of the legislature, in employing the very general language used in this section and in section 5039.72, was not to surrender fully the distinctively governmental function to regulate rates, but rather to permit municipalities to protect themselves and their inhabitants against extortionate rates until the state itself should act in the premises. *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 111, 173 P 799.

References

City of Baker v. Montana Petroleum Co., 99 M 465, 44 P 2d 735.

5039.63. Purpose for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances. The city or town council has power: To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, bridges, waterworks, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt. The additional indebtedness authorized, including all indebtedness heretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, shall not exceed ten per centum over and above the three per centum heretofore referred to, of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of three per centum shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and carried in the affirmative by a vote of the majority of said taxpayers who

vote at such election. It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure and appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise. Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Operation and Effect

The last clause of this section, which, in the codes of 1895, declared that no municipality having a water supply furnished by private persons shall erect a water plant to be operated by itself, but that it should purchase or condemn that owned by such private persons was declared unconstitutional. *Helena C. W. Co. v. Steele*, 20 M 1, 4, 49 P 382; *State ex rel. Gerry v. Edwards*, 42 M 135, 148, 111 P 734.

In the ownership and control of its water system, a city acts in its proprietary char-

acter, as distinguished from its governmental capacity. *H. C. W. Co. v. Steele*, 20 M 1, 6, 49 P 382; *Public Service Commission v. City of Helena*, 52 M 527, 534, 159 P 24.

A city is authorized by this section to acquire by condemnation proceedings water rights for the purpose of establishing a water supply system. *City of Helena v. Rogan*, 26 M 452, 469, 68 P 798.

In enacting this section, it is apparent that the legislature intended to pursue strictly the provisions of section 6, article XIII, of the constitution, with a view of effectuating its object. *Butler v. Andrus*, 35 M 575, 580, 90 P 785; *Carlson v. City of Helena*, 39 M 82, 98, 102 P 39; *Lepley*

v. City of Fort Benton, 51 M 551, 555, 154 P 710.

Under this section, there may be no extension, if there is no debt already contracted, for the word "additional" qualifies the character of the debt to be contracted, and refers also to a pre-existing amount of indebtedness to which it may be added. The word "necessary" defines the condition of affairs which requires the additional indebtedness. The condition must be such as to create the necessity. *Butler v. Andrus*, 35 M 575, 581, 90 P 785; *Lepley v. City of Fort Benton*, 51 M 551, 555, 154 P 710.

Id. The proviso under which the legislature may authorize an extension of the constitutional limit of three per cent., found in this section, is clear in purpose, to-wit, to allow such extension when it is necessary to construct a sewerage system or to procure a water supply. It cannot be granted or made available for any other purpose nor under any other circumstances than those which create the necessity for it.

The purpose of the limitation in matters of indebtedness, contained in this section, is to prevent extravagance, and such provisions should be so construed as to accomplish the desired end so far as possible. *Butler v. Andrus*, 35 M 575, 580, 90 P 785.

Id. A city's arbitrary action in placing a bond issue within the extended ten per cent. limit of indebtedness authorized, under certain conditions, by this section, when there was sufficient margin within the constitutional three per cent. limit to cover it, does not affect the validity of such bonds as a liability of the city.

Where the legislature had, by a general law applicable to all municipalities alike, such as that contained in this section, extended the constitutional limit of indebtedness which a city could incur in the procurement of a water supply or the construction of a sewer system, it was not necessary that the question whether the necessity calling for an extension of the limit of indebtedness existed be first submitted to the law-making power, and authority obtained from it through a special act. The determination of such necessity rested with the taxpayers affected by the contemplated improvement. *Carlson v. City of Helena*, 39 M 82, 98, 102 P 39.

Id. This section does not make it incumbent upon a city, when it desires to acquire a water supply of its own, to purchase the system then maintained therein by any person or corporation under a franchise granted or contract made by the municipality, the course pointed out in the proviso in said section relative to the purchase of the then existing system being obligatory only when the

city "desires" to so purchase; if not, it may procure any other available supply.

Under this section, a town council has power to condemn a sidewalk and order a new cement one in its stead, thereby exercising a legislative function, and, except for fraud or abuse of discretion, its action is not subject to judicial review. *O'Brien v. Drinkenberg*, 41 M 538, 544, 111 P 137.

It is only for special purposes, to-wit, sewerage systems and water supplies, that cities may incur indebtedness in excess of the constitutional limit of three per cent., when authorized by the taxpayers, but the constitutional provision does not limit the amount to which the legislature may authorize the taxpayers to extend the indebtedness. *Arnold v. City of Miles City*, 46 M 478, 481, 128 P 915.

Id. From this section it is clear that it was the intention of the law-making body to compel a city to refrain from becoming indebted for general purposes in excess of three per cent. of the value of its taxable property, and that, so long as it keeps within this limit, regard being had to the assessed valuation at the time the indebtedness is proposed to be contracted, it is proceeding according to law.

Id. A city, after having necessarily and legally incurred an outstanding indebtedness for a water supply and a sewer system, under the ten per cent. limit, may afterward incur an additional indebtedness of five thousand dollars, under the three per cent. limit, for building a bridge, where the existing indebtedness of the city, incurred under the three per cent. limit, has fallen below that limit by reason of payments thereon, or on account of the fact that the assessed valuation of taxable property has increased so as to leave a sufficient margin within the three per cent. limit.

Where a city had authorized an issue of bonds for sewer purposes which fully exhausted the three per cent. constitutional limit, it was without power to subsequently issue further bonds for the construction of a lighting plant by having recourse to the device of classing the first issue within the extended ten per cent. limit—which may be resorted to only for the procurement of a sewerage system or a water supply—a large enough margin being thus created within the three per cent. limit to accommodate the later issue. *Lepley v. City of Fort Benton*, 51 M 551, 555, 154 P 710.

Where a city acquires a water supply without resort to indebtedness beyond the constitutional three per cent. of the city's taxable property, it stands on an equal footing with an individual or private corporation engaged in furnishing water to it and its inhabitants, and is subject to all reasonable regulation and control by

the state under the police power. *Public Service Commission v. City of Helena*, 52 M 527, 534, 159 P 24.

A city which has acquired a water supply by resorting to the extended limit of indebtedness is not thereby exempted from control and regulation by the state through the agency of the public service commission. *Public Service Commission v. City of Helena*, 52 M 527, 538, 159 P 24.

Authority of a city to incur indebtedness beyond the three per cent. limit for the purpose of rendering or maintaining its water supply wholesome and fit for the purpose intended is clearly implied, if not expressly conferred. *McClintock v. City of Great Falls*, 53 M 221, 226, 163 P 99.

This section refers only to the contracting of an indebtedness in addition to the "then outstanding indebtedness of the city." *Parker v. City of Butte*, 58 M 531, 533, 193 P 748.

As against innocent purchasers of city bonds, the authority on the part of its

officers having power to issue them will be implied to extend to the making of recitals therein essential to their validity, i.e., that all conditions precedent to their issuance have been fulfilled; and where they recite that the city council has caused the corporate seal to be affixed to them and the signatures of the mayor and clerk attached, the city is estopped to contend that they were signed by those officers without authority. *Edmunds v. City of Glasgow*, 89 M 596, 599 et seq., 300 P 203.

Town could not lawfully contract for installation of water system in excess of constitutional debt limitation without approval of taxpayers. *Lumbermen's Trust Co. v. Town of Ryegate*, 50 F 2d 219.

Id. Town which did not submit to taxpayers question whether constitutional debt limit might be exceeded held not liable, on implied contract, to holder of special improvement district bonds for construction of water supply system, where bonds were declared void.

5039.64. Sidewalks and foot pavements. The city or town council has power: To regulate and provide for the construction or repair of sidewalks and foot pavements, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks or pavements, and the city or town may pay for the same, and the amount so paid is a lien upon the lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: En. Subd. 65, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Sidewalks

An assessment levied in 1908 to pay for the expense incurred by a city in the construction of a sidewalk without first giv-

ing the owner of the abutting property notice and affording him an opportunity to construct it himself, as required by the statute and an ordinance of the city then in force, was invalid and constituted no lien on the property. *Murray et al. v. City of Helena et al.*, 65 M 485, 491 et seq., 211 P 197.

5039.65. Granting of railroad rights of way—regulation of railroads—speed—flagmen at street crossings. The city or town council has power: To grant the right of way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, and to regulate the running and management of the same, and compel the owner of such street or other railroads to keep the street in repair when occupied by such street or other railroad; to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

History: En. Subd. 66, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Right of Way

The use to which a railroad proposed to be constructed in the streets of a city by a mining company was to be put in haul-

ing supplies, ores, etc., to and from the company's mine, as well as supplies, ores, merchandise, etc., which might be offered for carriage by any person or corporation, was a public use. *Kipp v. Davis-Daly Copper Co.*, 41 M 509, 520, 110 P 237.

Id. A railroad proposed to be constructed by a mining company over the streets, and entirely within the limits of a city,

for the carriage of supplies, ores, etc., which would otherwise have to be conveyed by teams, is not a "commercial" railroad as distinguished from street railroads; such contemplated use of the city's streets falls within their ordinary uses; and hence no additional servitude is cast upon the owner of abutting real property for which compensation must first be made.

The municipal authorities which have control of streets and highways may use or permit the use of them in any manner

or for any purpose reasonably incident to the appropriation of them to public travel. For such changing public uses the owner of abutting property is presumed to have received compensation when the way was created. *Kipp v. Davis-Daly Copper Co.*, 41 M 509, 516, 110 P 237; *Smith v. Northern Pacific Ry. Co.*, 50 M 539, 550, 148 P 393.

This section carries out the plain intent of section 12 of article XV of the constitution. *Kipp v. Davis-Daly Copper Co.*, 41 M 509, 516, 110 P 237.

5039.66. Fire escapes and safety exits. The city or town council has power: To compel the owner of a building to erect fire-escapes and proper exits and entrances when necessary for safety.

History: En. Subd. 67, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.67. Grading of streets—requirements for change of grade. The city or town council has power: To establish the grade of any street, alley, or avenue, and when the grade has been established, it must not be changed except by a vote of the majority of the council, and not then until the damage to property owners, caused by the change of grade, has been assessed and determined by three disinterested appraisers who must be appointed by the mayor and confirmed by the council, who must make an appraisal, taking into consideration the benefits, if any, to the property, and file their report with the clerk within ten days after receiving notice of their appointment, and the amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

History: En. Subd. 68, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Grade of Streets

After the grade of a street has once

been established, the city, under this section, and 5300, may not change it until the damages to abutting property have been determined and tendered to the owner. *State v. Northern Pac. Ry. Co.*, 88 M 529, 545, 295 P 257.

5039.68. Sprinkling of streets and public places. The city or town council has power: To provide for the sprinkling of the streets, alleys, and public places of the city or town, and to fix the rates to defray the cost of said work.

History: En. Subd. 69, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Sprinkling of Streets

Held, in view of statutory provisions relating to the power of cities to provide for the sprinkling, cleaning, etc., of streets, and for the establishment of a

board of health, that the sprinkling of streets is more naturally referable to the maintenance of its streets—a corporate, not a governmental function—than to the preservation of the public health, and that therefore defendant city was properly held liable for injuries inflicted by the negligence of the driver of a sprinkling truck. *Griffith v. City of Butte*, et al., 72 M 552, 562, 234 P 829.

5039.69. Location of steam boilers—signs and awnings—constructions from sidewalks. The city or town council has power: To regulate the location of steam boilers, the putting up of signs and awnings, and the construction of entrances to basements, cellars, and other floors to buildings from the sidewalks.

History: En. Subd. 70, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.70. Prize fights and boxing matches. The city or town council has power: To prevent and prohibit prize fights, boxing matches of any kind, with or without gloves, or exhibition of prize fighters, boxers, or sluggers in the city or town, or within five miles thereof.

History: En. Subd. 71, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.71. Requiring owners to repair dangerously damaged structures. The city or town council has power: To require the owner of a sidewalk, house, or other structure which is dangerous to passers-by, to repair or remove the same after notice.

History: En. Subd. 72, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.72. Laying of gas, water and other mains. The city or town council has power: To permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer; and the streets and alleys must be placed in as good condition by the person or corporation making the excavation, as they were before the excavation was made, and the mains laid down, and in default thereof the council may order the same to be done at the expense of such person or corporation.

History: En. Subd. 73, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

Laying of Mains

A water company authorized by this section to make an excavation is liable to an individual for injuries received through its negligence in failing in its duty to restore the street to its former safe condition. *Robinson v. Mills*, 25 M 391, 398, 65 P 114.

Operation and Effect

The power of private water companies

to sell water to consumers in a city depends upon legislative grant, the granting power having authority to attach conditions to its exercise, and under this section the legislature has delegated authority to cities and towns to grant such companies the right to lay its pipes and mains, imposing upon them the obligation to keep them in repair. *Nord v. Butte Water Co.*, 96 M 311, 338, 30 P 2d 809.

References

City of Baker v. Montana Petroleum Co., 99 M 465, 44 P 2d 735.

5039.73. Public grounds. The city or town council has power: To provide for inclosing, improving, and regulating all public grounds belonging to the city or town.

History: En. Subd. 74, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.74. Power of condemnation. The city or town council has power: To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer, waterway, in the city or town, or for any other public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceedings thereunder had as provided in the code of civil procedure concerning eminent domain.

History: En. Subd. 75, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1927. See also M. 1921; amd. Sec. 1, Ch. 115, L. 1925; history of Sec. 5039.

Condemnation

In condemnation proceedings to acquire title to property for a water supply, it is not necessary to allege or prove that the city had endeavored to obtain the consent of the owners of the property to the taking thereof. *City of Helena v. Rogan*, 27 M 135, 137, 69 P 709.

Under section 4985, the fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of a city or town or an addition thereto is recorded, is equivalent to a deed; but, as the respective rights of the

abutting owners and of the public are dependent upon the fact of dedication, it is not important to inquire where the fee is vested. *Kipp v. Davis-Daly Copper Co.*, 41 M 509, 516, 110 P 237.

Authority to condemn property for a public use must be clearly expressed in the law before such right will be allowed. *State ex rel. McLeod v. District Court*, 67 M 164, 169, 215 P 240.

Id. In the absence of legislative authority empowering it so to do, a city has no right to condemn land outside of its corporate limits for a public highway leading to a park owned by it.

5039.75. Appropriation of money and payment of debts and expenses. The city or town council has power: To appropriate money, and provide for the payment of the debt and expenses of the city or town, and also the debt of the municipal corporation of which it is the successor.

History: En. Subd. 76, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.76. Census may be taken. The city or town council has power: To take a census of the inhabitants of a city or town at any time.

History: En. Subd. 77, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.77. Printing contract. The city or town council has power: To provide for the city or town printing, the contract for which must be let annually to the lowest bidder.

History: En. Subd. 78, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.78. Securing water supply. The city or town council has power: To adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

History: En. Subd. 79, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.79. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants. The city or town council has power: To create special improvements districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants, which warrants shall bear interest at a rate not to exceed six per centum per annum.

History: En. Subd. 80, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

repealed by implication by sections 5225 et seq., relating to special improvements in cities and towns. *Shapard v. City of Missoula*, 49 M 269, 275, 141 P 544.

Improvement Districts

The provisions of this section were not

5039.80. Hats and bonnets in theaters and public amusement places. The city or town council has power: To regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

History: En. Subd. 81, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.81. Ditches, drains and flumes in city or town. The city or town council has power: To regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: En. Subd. 82, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.82. Noxious weed extermination—tax. The city or town council has power: To declare and determine what vegetation within the city or town shall be noxious weeds, and to provide the manner in which they shall be exterminated, and to require the owner or owners of any property, within said city or town to exterminate or remove noxious weeds from their premises, and the one-half of any road or street lying next to the lands or boulevard abutting thereon, and to provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the noxious weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

History: En. Subd. 83, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.83. Acquisition of landing fields for aircraft—jurisdiction. The city or town council has power: To acquire, by gift, purchase or condemnation, lands for landing fields for aircraft within or without the corporate limits of the municipality, and to exercise municipal jurisdiction over the land so acquired where such lands, or any portion thereof, are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927. See also history of Sec. 5039.

5039.84. Power to license and regulate soft drink establishments and pool and billiard halls. In addition to the other powers vested in city governments the city or town council of any city or town shall have power to make and pass necessary ordinances providing for the licensing and regulation of soft drink establishments and all pool and billiard halls; said city and town council shall have power to regulate and limit the number of such licenses issued and to provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

History: En. Sec. 1, Ch. 136, L. 1923.

5039.85. Power of cities and towns to acquire natural gas and distributing system therefor. The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase or development of an adequate supply of natural gas, and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of said city or town or vicinity; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed three per centum (3%) of the total assessed valuation of the taxable property of the city or town as ascertained by the last

assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 128, L. 1927.

5040. Inspection and measurement of gas and electricity. The council of any incorporated city or town shall have power, by ordinance, to provide for and regulate the inspection and the measurement of gas, electric, or other light, and electric or other power, sold within its limits or brought into or carried through any such city or town.

History: En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907; re-en. Sec. 5040, R. C. M. 1921.

5040.1. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations. The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any factory, or other industry, located within the corporate limits of such city or town, or to any factory or other industry located within three miles of the corporate limits of such city or town, at rates established for like use or service to the inhabitants or industries located inside the corporate limits of such city or town, provided that delivery of water by any such city or town to or for the use of any factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town except as hereinafter provided.

The city council of any city within the state of Montana, having a population of twenty-four thousand (24,000) or more according to the last government census, that owns and operates a municipal water system to furnish water to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system to the inhabitants or to any factory, industry or producer of farm or other products located within three miles of the corporate limits of such city, at such rates as to the said city council may seem just and equitable, and such city council is further empowered to make collections for furnishing water in the same manner as collections are made within the corporate limits.

Any person, firm or corporation residing either inside or within three miles of the corporate limits of a city owning a municipal water system which furnishes water as a public utility, who shall wilfully turn on the water after the same shall have been shut off by or under the direction of the said city for non-payment of water charges, or who shall unlawfully take water from such water system shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929.

5041. Regulation of motor vehicles and their speed. The council of any incorporated city or town shall have power, by ordinance, to regulate motor vehicles and their speed within the limits of such city or town, and

to prescribe and enforce fines and penalties for violation of such regulations.

History: En. Sec. 1, Ch. 49, L. 1917; re-en. Sec. 5041, R. C. M. 1921.

5042. "Motor vehicles" defined. The term "motor vehicles," as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except traction-engines, road-rollers, fire wagons and engines, fire department vehicles, and police patrol-wagons.

History: En. Sec. 2, Ch. 49, L. 1917; re-en. Sec. 5042, R. C. M. 1921.

5043. Organized cities and towns authorized to take by gift, donation, devise, etc. Any city or town organized under the laws of the state of Montana is hereby empowered and given the right to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest, or any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water reservoir or watershed, or any timber land or any reserve, or any fish or game reserve in any part of the state, and the right to own, hold, work, and improve the same; and said gifts, donations, grants, bequests, or devises made to any officer or board of any such city or town shall be considered a gift, donation, grant, bequest, or devise made for the use and benefit of any such city or town, and shall be administered and used, by such city or town for the particular purpose for which the same was given, donated, granted, bequeathed, or devised.

History: En. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R. C. M. 1921.

Operation and Effect

This section conferring the right upon cities to accept by gift, deed or devise land for a public park, does not by implication clothe it with power to condemn land for a public road leading thereto. State ex rel. McLeod v. District Court, 67 M 164, 169, 215 P 240.

Where at the time of the death of a testator who bequeathed property to a

town for library purposes the law did not provide a method by which the municipality could accept the donation, but later, after the estate had been distributed and the decree of distribution had become final by failure of appeal therefrom and the trust created thereby became effective, the legislature enacted a statute under which a town could accept, the trust was not subject to attack on the ground of the town's former incapacity to accept. Town of Cascade v. County of Cascade, 75 M 304, 311, 243 P 806.

5044. Who may make gift, donation, or grant—property included therein—how used and administered. Any donation, gift, or grant may be made by any person, company, copartnership, or corporation to any city or town organized under the laws of the state of Montana, of any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water reservoir or watershed, or any timber land or reserve, or any fish or game reserve in any part of the state of Montana, to be held for the use and benefit of said city or town; and any person over the age of eighteen years and of sound mind and discretion may make any gift, grant, donation, or testamentary disposition of property, real, personal, or mixed, or any improved or unimproved park or playground, or water or water right, water reservoir or watershed, or timber land or reserve, or any fish or game reserve in any part of the state, to any city or town organized under the laws of the state of Montana; but in the event of any gift, donation, grant, devise, or bequest.

shall be made to any such city or town, or to any officer or board of such city or town, the same shall be construed as a gift, donation, grant, devise, or bequest to such city or town, and shall be administered and used for such city or town, and for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. And in the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R. C. M. 1921.

References

Town of Cascade v. County of Cascade, 75 M 304, 312, 243 P 806.

5045. Public baths. All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town, and to defray the cost and expense of maintaining said public bathing place, said city or town is hereby authorized and empowered to contract an indebtedness, upon behalf of said city or town, upon the credit thereof, by borrowing money or issuing bonds; provided, that no money may be borrowed, and no bonds may be issued for said purpose, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and a majority vote be cast therefor.

History: En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907; re-en. Sec. 5045, R. C. M. 1921.

5046. Power to maintain and regulate. Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all by-laws, ordinances, resolution, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: En. Sec. 2, Ch. 12, L. 1905; re-en. Sec. 3295, Rev. C. 1907; re-en. Sec. 5046, R. C. M. 1921.

5047. Certain cities may provide public band concerts. Cities of the first, second and third class, as defined by the laws of the state of Montana, and incorporated towns may, at their discretion, provide public band concerts for the entertainment of their people, and to pay therefor out of any moneys in a fund to be provided in accordance with the provisions of the next section, said band concerts and entertainments to be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week; provided, further, that no band shall be employed in connection with the giving of said band concerts, except one having its headquarters in the said city or town in which said band concert is given.

History: En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921; re-en. Sec. 5047, R. C. M. 1921.

5048. Tax levy for band concerts. For the purpose of providing band concerts as in this act provided, the council or other governing body in

any town or city of the first, second or third class, or any incorporated town, may assess and levy, in addition to the levy for general municipal or administrative purposes, not exceeding one mill on the dollar on the assessed value of the taxable property of the said city or town.

History: En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R. C. M. 1921.

5049. Establishment of free public library—tax levy for maintenance.

The council has power to establish and maintain a free public library, and for that purpose may provide by ordinance for a tax as follows: In a city or town having assessed valuation of seven hundred and fifty thousand dollars or more, a tax not exceeding two and one-half mills on the dollar on the property may be levied. In a city or town having an assessed valuation of less than seven hundred fifty thousand dollars, a tax not exceeding three mills on the dollar on the property may be levied. The tax so levied and collected constitutes a fund known as the "library fund," and must be expended only for the purchase of books and other things necessary for a library, and the support and maintenance thereof; provided, that no increase over the present authorized levy shall be made until the question of such increase has first been submitted to a vote of the taxpayers affected thereby.

History: En. Sec. 1, p. 110, L. 1883; re-en. Sec. 1141, 5th Div. Comp. Stat. 1887; amd. Sec. 5039, Pol. C. 1895; amd. Sec. 1, p. 229, L. 1897; amd. Sec. 1, Ch. 62, L. 1905; re-en. Sec. 3488, Rev. C. 1907; re-en. Sec. 5049, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1931.

5050. Submission of questions to electors. Before any such ordinance is passed the council must submit to the qualified electors of the city or town at an election the question. At such election the ballot must have printed or written thereon the words, "Public Library—Yes," "Public Library—No," and in voting the elector must make a cross thus, "X," opposite the answer for which he intends to vote.

History: En. Sec. 5040, Pol. C. 1895; re-en. Sec. 3489, Rev. C. 1907; re-en. Sec. 5050, R. C. M. 1921.

5051. Library to be established when majority vote favors—election at which question may be submitted. If the majority of the votes cast at such election is in favor of the establishment of a public library, then such library must be established as above provided. Such question may be submitted at the annual or at any special election held in such city or town, and must be submitted at any such election on the petition of one hundred or more inhabitants of such city or town.

History: En. Sec. 5041, Pol. C. 1895; re-en. Sec. 3490, Rev. C. 1907; re-en. Sec. 5051, R. C. M. 1921.

5052. What constitutes a quorum. A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated, and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

History: En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907; re-en. Sec. 5052, R. C. M. 1921. Cal. Pol. C. Sec. 4406.

5053. May prescribe rules. The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any

member for the same by a two-thirds vote of the members elected, and must cause to be kept a journal of the proceedings, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R. C. M. 1921. Cal. Pol. C. Sec. 4407.

5054. Ayes and noes must be called, and a majority elects. The ayes and noes must be called and recorded on the final passage of any ordinance, by-law, or resolution, or making any contract, and the voting on the election or appointment of any officer must be *viva voce*, and a majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: Ap. p. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122, 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907; re-en. Sec. 5054, R. C. M. 1921.

Operation and Effect

This section does not apply to an election by a city council to fill a vacancy in its own body, caused by resignation or

death; the provisions governing such election are found in section 5015. State ex rel. Wilson v. Willis, 47 M 548, 551, 133 P 962.

References

Cited or applied as section 3263, revised codes, in O'Brien v. Drinkenberg, 41 M 538, 544, 111 P 137; State ex rel. O'Hern v. Loud, 92 M 307, 308, 14 P 2d 432.

5055. Style of ordinance. The style of ordinances may be as follows: "Be it ordained by the council of the city of....., or town of.....," and all ordinances may be published or posted, as prescribed by the council.

History: En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R. C. M. 1921.

5056. Ordinances—how prepared. All ordinances, by-laws, and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed, and take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921.

NOTE.—See also section 5060 which deals with effective date of ordinances.

Operation and Effect

An ordinance calling for a special election for the authorization or rejection of an increase of the city's indebtedness by the issuance of water and sewer bonds, was not obnoxious to the prohibition contained in this section, that no ordinance shall be passed containing more than one subject. The general subject of the ordinance was the incurring of the indebtedness, and the different purposes named in it as making the indebtedness necessary were matters of detail for the information of the voters. *Carlson v. City of Helena*, 39 M 82, 108, 102 P 39.

Id. The observance of the limitation imposed by this section, relative to ordin-

ances containing more than one subject, which must be clearly expressed in its title, is mandatory, and renders void any ordinance which violates it. But whatever is germane, incidental, or necessary to the main or general subject of an ordinance may be included in it, and is not a separate subject. Compare *State v. McKinney*, 29 M 375, 382, 74 P 1095. See also *State ex rel. Moreland v. Police Court*, 87 M 17, 285 P 178.

A resolution of intention is not valid unless approved by the mayor, and all proceedings taken thereunder are void. *Hinzeman v. City of Deer Lodge*, 58 M 369, 374, 193 P 395.

The restriction placed by this section upon the city council in enacting ordinances to the effect that none shall be passed containing more than one subject which shall be clearly expressed in its title, like that imposed upon the legislature in enacting a statute, must be liberally con-

strued, and the ordinance will be sustained unless it appears beyond a reasonable doubt that it does not meet the requirement. *State v. Mayor of City of Butte*, 69 M 232, 237, 221 P 524.

Id. An ordinance establishing a police department, repealing a series of ordinances dealing therewith, and those relating to the location and conduct of the city jail, held not open to the objection that it was void as in contravention of the provisions of this section.

Held that an ordinance the title of which states that its purpose was the suppression of the liquor traffic in a given city and in the body of which it was provided that possession of liquor was unlawful when made so by the laws of the United States, i.e., when kept for the purposes of being sold, bartered, exchanged,

given away, furnished or otherwise disposed of in violation of the national prohibition act, was not open to the objection that its title was defective in that "traffic" did not warrant the prohibition against possession without the purpose of sale, barter, etc., possession for any of such purposes being clearly germane to the general subject of "liquor traffic." *State ex rel. Moreland v. Police Court*, 87 M 17, 19, 285 P 178.

References

Cited or applied as section 3265, revised codes, in *State ex rel. Browne v. Booher*, 43 M 569, 570, 118 P 271; *Harvey v. Town of Townsend et al.*, 57 M 407, 188 P 897; *State ex rel. O'Hern v. Loud*, 92 M 307, 310, 14 P 2d 432.

5057. Certain ordinances validated. Any and all ordinances of any city or town within Montana, which have been heretofore duly recorded and signed by the mayor or presiding officer of the council and by the city clerk, as provided by section 334 of an act entitled "An act to amend section 334 of the Compiled Statutes of Montana, fifth division, relating to printing and posting city ordinances," duly approved March 9, 1889, which may have been published in some newspaper published within the limits of the city or town, or written copies of which said ordinances may have been posted in not less than five conspicuous places within the limits of such city or town, are hereby declared to have the same legality and validity as if such publishing or posting had been duly directed by the council of such city or town, and as if the city clerk had attached, at the expiration of each term of posting and at the end of any such ordinance or ordinances as recorded in the book of ordinances, his certificate as to the fact of posting such ordinance or ordinances, as provided for by said act herein referred to.

History: En. Sec. 5043, Pol. C. 1895; re-en. Sec. 3492, Rev. C. 1907; re-en. Sec. 5057, R. C. M. 1921.

5058. Initiative in cities—petition. Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Eight per cent. of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act. If the council shall have made any change in the

proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel on the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible, and have precedence over other cases, except criminal and taxation cases. The court shall have jurisdiction in such cases to determine whether or not the change made by the city council is material, and also whether the petition was regular in form or substance, and shall also have power to decide, if the fact be put in issue by the defendant, whether or not the petition was signed by a sufficient number of voters and was regular in form. If the court shall decide that the change was material and that the petition was regular in form and signed by a sufficient number of legal voters, then the ordinance proposed by the petition shall be submitted to the people as provided in this act. If the court shall decide that the ordinance passed by the council was not materially different from that proposed in the petition, or the petition was not regular in form, or not signed by a sufficient number of legal voters, the ordinance shall not be submitted to the people. If the court shall decide that the changes made by the council were material, but that the petition was irregular for some reason, or not properly or sufficiently signed, a new petition, regular in form, may be presented by the required number of legal voters, asking the council to submit such ordinance to the people, and thereupon the same shall be so submitted as provided in this act. If the council shall not, within sixty days, pass an ordinance on the subject of the ordinance proposed in the petition, then the ordinance proposed by the petition shall be submitted to the people. Before submitting such ordinance to the people, the mayor or city or town council may direct that a suit be brought in the district court in and for the county, in the name of the city or town, to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The complaint shall name as defendants not less than ten nor more than twenty of the petitioners. In addition to the names of such defendants, in the caption of the complaint, there shall be added the words, "and all petitioners whose names appear on the petition for an ordinance filed on the..... day of....., in the year.....," stating the date of filing.

The summons shall be similarly directed and shall be served on the defendants named therein, and in addition thereto shall be published at least once, at the expense of the city, in at least one newspaper published in the city or town. In all suits brought under this section the decision of the district court shall be final except in cases where it shall decide that the proposed ordinance would be unconstitutional or invalid as being beyond the powers of the city or town council, and in such excepted cases the petitioners, or any of them, may appeal to the supreme court as in other cases, but shall not be required to give any bond for costs. The decision of the district court holding such ordinance valid or constitutional shall not, however, prevent the question being raised subsequently, if the ordinance shall be passed and go into effect, by any one affected by the ordinance. No costs shall be allowed to either side in suits or appeals under this section.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R. C. M. 1921.

Operation and Effect

The initiative and referendum provisions applicable to cities apply, and were evidently intended to apply only, to matters of general legislation in which all electors without distinction may take an

active interest. *Carlson v. City of Helena*, 39 M 82, 113, 102 P 39.

The adoption of the initiative and referendum as applied to municipal legislation, among other things, indicates that it is the policy of this state to confide to the citizens of municipalities the right of local self-control to the utmost extent compatible with an orderly system of state government. *State ex rel. Gerry v. Edwards*, 42 M 135, 150, 111 P 734.

5059. Submission of question at regular election. Any ordinance proposed by petition as aforesaid, which shall be entitled to be submitted to the people, shall be voted on at the next regular election to be held in the city or town, unless the petition therefor shall ask that the same be submitted at a special election, and such petition be signed by not less than fifteen per cent. of the electors qualified to vote at the last preceding municipal election.

History: En. Ch. 167, L. 1907; Sec. 3267, Rev. C. 1907; re-en. Sec. 5059, R. C. M. 1921.

5060. No ordinance to be effective until thirty days after passage. No ordinance or resolution passed by the council of any city or town shall become effective until thirty days after its passage, except general appropriation ordinances providing for the ordinary and current expenses of the city or town, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting of any property for a period exceeding one year, nor the purchase or sale of personal property exceeding five thousand dollars in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R. C. M. 1921.

Operation and Effect

This section has no application to an ordinance providing for the issuance of

water and sewer bonds after sanction of the taxpayers affected thereby has been obtained. The law has to do with matters of general legislation on which all electors, whether taxpayers or not, may vote, while the question whether bonds shall be issued can be submitted to taxpayers only. *Carlson v. City of Helena*, 39 M 82, 113, 102 P 39.

Held that the provision of section 5026, that the salary of a city officer shall not be increased or diminished during his term of office, means the term the officer is then serving, and that therefore, where the salary of a mayor

was increased by ordinance near the close of his first term, which increase could not, under this section become effective until after his second term had commenced, the increase was made during his prior term and not during the term he was then serving, and the officer was entitled thereto. *Broadwater v. Kendig et al.*, 80 M 515, 522, 261 P 264.

References

Cited or applied as section 3276, revised codes, in *State ex rel. Quintin v. Edwards*, 40 M 287, 298, 106 P 695.

5061. Referendum petition. During the thirty days following the passage of any ordinance or resolution, five per cent. of the qualified electors of the city or town may, by petition addressed to the council and filed with the clerk of the city or town, demand that such ordinance or resolution, or any part or parts thereof, shall be submitted to the electors of the city or town.

History: En. Ch. 167, L. 1907; re-en. Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R. C. M. 1921.

5062. Referendum to be had at regular election. Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the city or town at the next municipal election; provided, the petition or petitions shall have been filed with the city clerk at least thirty days before such election. If such petition or petitions be signed by not less than fifteen per cent. of the qualified electors of the city or town, the measure shall be submitted at a special election to be held for the purpose.

History: En. Ch. 167, L. 1907; Sec. 3270, Rev. C. 1907; re-en. Sec. 5062, R. C. M. 1921.

5063. Special election may be ordered. The city or town council may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any ordinance passed by the city or town council, and may likewise submit to the electors, at a general election, any ordinance passed by the city or town council.

History: En. Ch. 167, L. 1907; re-en. Sec. 3271, Rev. C. 1907; re-en. Sec. 5063, R. C. M. 1921.

5064. Proclamation of election. Whenever a measure is ready for submission to the electors, the clerk of the city or town shall, in writing, notify the mayor thereof, who, forthwith, shall issue a proclamation setting forth the measure and the date of the election or vote to be had thereon. Said proclamation shall be published four days in four consecutive weeks in each daily newspaper in the municipality, if there be such, otherwise in the weekly newspapers published in the city or town. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the city or town.

History: En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R. C. M. 1921.

5065. Ballots and method of voting. The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the municipality shall be on separate sheets, and returned to the clerk of the municipality. The return shall be canvassed in the same manner as the returns of regular elections for municipal officers. The mayor of the municipality shall issue his proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the municipality for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five days after the vote is officially announced.

History: En. Sec. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R. C. M. 1921.

5066. Qualifications of voters. The qualifications for voting on questions submitted to the electors, under the provisions hereof, shall be the same as those required for voting at municipal elections in the city or town at elections for mayor or aldermen thereof. And where, by the laws of the state, or by ordinance of the city or town made in pursuance thereof, electors are required to register in order to be qualified to vote at municipal elections, the registration book or books shall be prima facie evidence of the right to sign any petition herein provided for.

History: En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R. C. M. 1921.

5067. Forms of petitions and conduct of proceedings. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act. The city clerk shall perform the duties which, under the state laws, devolve upon the county clerk and secretary of state, in so far as the provisions relating thereto may be made to apply to the case of the city or town clerk; but it shall not be necessary to mail or distribute copies of the petitions or measures to the electors of the city or town.

History: En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R. C. M. 1921.

5068. To what ordinances applicable. The provisions of this act regarding the referendum shall not apply to ordinances which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any city or town.

History: En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R. C. M. 1921.

References

Cited or applied as sec. 3276, revised codes, in *Carlson v. City of Helena*, 39 M 82, 113, 102 P 39; *State ex rel. Gerry v. Edwards*, 42 M 135, 150, 111 P 734.

CHAPTER 384

MUNICIPAL CONTRACTS AND FRANCHISES

- Section 5069. Officers must not be interested in contracts.
 5070. Awarding contracts.
 5071. Contractor—oath of.
 5072. Alteration and modification of contract—how made.
 5073. No allowance for extra work.
 5074. Franchise, how granted.
 5075. Grant of franchise must be submitted to tax-paying freeholders.
 5076. Same—notice of election.
 5077. When voted, council must pass ordinance.

5069. Officers must not be interested in contracts. The mayor, or any member of the council, or any city or town officer, or any relative or employee thereof, must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

History: En. Sec. 345, 5th Div. Comp. State. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R. C. M. 1921.

Operation and Effect

This section is not applicable to a mayor

who was not interested in a contract made with the city, but who agreed, after the contract was accepted and filed with the proper official, to take stock in a corporation succeeding to the rights of the original contractor. *State v. Great Falls City Council*, 19 M 518, 530, 49 P 15.

5070. Awarding contracts. All contracts for work, or for supplies or material, for which must be paid a sum exceeding five hundred dollars (\$500.00), must be let to the lowest responsible bidder, under such regulations as the council may prescribe; provided, that no contract shall be let extending over a period of three years, or more, without first submitting the question to a vote of the resident taxpayers of said city or town.

History: En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927.

Operation and Effect

To successfully attack the letting of a contract for a municipal improvement, it must be shown that the contract was not let to the lowest responsible bidder, that there was not any opportunity afforded for competitive bidding, or that there was collusion or bad faith on the part of the council or such gross mistake as to preclude the exercise of sound judgment. *O'Brien v. Drinkenberg*, 41 M 538, 550, 111 P 137.

Where a city council incorporated in a resolution ordering the paving of a street, as well as in the call for bids, the requirement that in the construction of the pavement certain patented processes and compounds should be used, and the company controlling the patent agreed that the cost of such material, which constituted only a part of the gross cost of the improvement, should be the same to all bidders, while in other respects, such as the cost of labor, other materials, etc., the principle of competition was retained, the proceedings were not void as being violative of this section. *Ford v. City of Great Falls*, 46 M 292, 311, 127 P 1004.

Id. This section is designed to prevent favoritism and to secure to the public the

best possible return for the expenditure of the funds which the property owners are required to furnish, through the payment of taxes and assessments.

Id. The requirement of this section extends to and includes expenditures made from the general revenues of the municipality, as well as from funds derived from special assessments.

Under the exclusive rather than directory nature of the limitation upon the power of cities to let contracts prescribed by this section, a contract entered into by a city with a street railway company, according to the terms of which the latter was to be paid the cost of removing and replacing its tracks on certain streets to enable the former to lay sewers, was void, it not having been let to the lowest responsible bidder as required by the statute. *Missoula St. Ry. Co. v. City of Missoula*, 47 M 85, 95, 130 P 771; *Commonwealth Public S. Co. v. Deer Lodge*, 96 M 48, 64, 29 P 2d 667.

A contract with a city for the construction of a system of waterworks is governed by the provisions of this section and sections 5071 to 5073. *City of Forsyth v. Crellin*, 210 F 835, 838.

References

Cited or applied as section 3278, revised codes, in *City of Butte v. Bennetts*, 51 M 27, 29, 149 P 92.

5071. Contractor—oath of. No money must be paid to any person claiming under a contract with the council, until such person has first filed with the clerk a statement, under oath, disclosing the names of all persons directly or indirectly interested in the contract, of the proceeds or profits thereof, declaring that no persons other than those named are interested, and that no person forbidden by this title has any interest in the same.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907; re-en. Sec. 5071, R. C. M. 1921.

References

Cited or applied as section 4808, polit-

ical code, in *State v. Great Falls City Council*, 19 M 518, 527, 540, 49 P 15.

Cited or applied as section 3279, revised codes, in *City of Forsyth v. Crellin*, 210 F 835, 837.

5072. Alteration and modification of contract—how made. When it becomes necessary, in the prosecution of any work, to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council, and such resolution is of no effect until the price to be paid for the same is agreed to in writing, and signed by the contractor and approved by the council.

History: En. Sec. 4809, Pol. C. 1895; re-en. Sec. 3280, Rev. C. 1907; re-en. Sec. 5072, R. C. M. 1921.

References

Cited or applied as section 3280, revised codes, in *City of Forsyth v. Crellin*, 210 F 835, 837.

5073. No allowance for extra work. No contractor must be allowed anything for extra work caused by an alteration or modification, unless a resolution is made and an agreement signed as provided in the preceding section, nor must he in any case be allowed more for such alteration than the price fixed by such agreement.

History: En. Sec. 4810, Pol. C. 1895; re-en. Sec. 3281, Rev. C. 1907; re-en. Sec. 5073, R. C. M. 1921.

References

Cited or applied as section 3281, revised codes, in *City of Forsyth v. Crellin*, 210 F 835, 837.

5074. Franchise, how granted. The council must not grant a franchise or special privilege to any person save and except in the manner specified in the next section. The powers of the council are those only expressly prescribed by law and those necessarily incident thereto.

History: En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921; re-en. Sec. 5074, R. C. M. 1921.

5075. Grant of franchise must be submitted to tax-paying freeholders. No franchise for any purpose whatsoever shall be granted by any city or town, or by the mayor or city council thereof, to any person or persons, association, or corporation, without first submitting the application therefor to the resident freeholders whose names shall appear on the city or county tax-roll preceding such election.

History: En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907; re-en. Sec. 5075, R. C. M. 1921.

Operation and Effect

A city is prohibited from granting a

franchise to a gas company to lay its mains in its streets, until the application for it has first been submitted to and approved by the qualified electors. *State ex rel. Billings v. Billings Gas Co.*, 55 M 102, 108, 173 P 799.

5076. Same—notice of election. A notice of such election must be published at least in one daily newspaper, if there be one published in the

city or town, and if not, in some weekly newspaper of general circulation, at least once a week for three successive weeks, and such notice must be posted in three public places in the city or town. The notice must state the time and place of holding the election, and the character of any such franchise applied for, and the valuable consideration, if any there be, to be derived by the city. At such election the ballots must contain the words, "For granting franchise," "Against granting franchise," and in voting, the elector must make a cross thus, "X," opposite the answer he intends to vote for. Such election must be conducted and canvassed and the return made in the same manner as other city or town elections.

History: En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907; re-en. Sec. 5076, R. C. M. 1921.

5077. When voted, council must pass ordinance. If the majority of votes cast at the election be "For granting franchise," the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

History: En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907; re-en. Sec. 5077, R. C. M. 1921.

CHAPTER 385

PRESENTATION AND PAYMENT OF CLAIMS—CITY WARRANTS

- Section 5078. Presentation of claims—limitation of actions.
 5079. Allowance and payment of claims—cash basis.
 5080. Defective highways and public works—notice of claim for injuries.
 5080.1. Non-liability of municipality for injuries caused by accumulations of snow or ice in streets or public ways.
 5081. City warrants—rate of interest.
 5082. Call for payment.
 5083. Registry of warrants.

5078. Presentation of claims—limitation of actions. All accounts and demands against a city or town must be presented to the council duly itemized and accompanied by an affidavit by the party or his agent, stating the same to be a true and correct account against the city or town for the full amount for which the same is presented, and that the same accrued as set forth, and with all necessary and proper vouchers, within one year from the date the same accrued; and any claim or demand not so presented within the time aforesaid is forever barred, and the council has no authority to allow any account or demand not so presented, nor must any action be maintained against the city or town for or on account of any demand or claim against the same, until such demand or claim has first been presented to the council for action thereon; provided, however, that in case the total indebtedness of a city or town has reached three per centum of the total assessed valuation of the taxable property of such city or town, as ascertained by the last assessment for state and county taxes, it shall be lawful for, and such city or town is hereby authorized and empowered, to conduct its affairs and business on a cash basis as provided and contemplated by the next section of this code.

History: En. Sec. 4812, Pol. C. 1895;
 re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec.
 3288, Rev. C. 1907; re-en. Sec. 5078, R. C.
 M. 1921.

Operation and Effect

The provision of this section, requiring claims against a city to be verified and filed with the municipality, has no appli-

eration to a claim for salary fixed by ordinance; hence a police officer was under no obligation to so present his claim to entitle him to recover his salary for the time he was unlawfully deprived of his office. *Wynne v. City of Butte*, 45 M 417, 423, 123 P 531.

Under this section, if moneys paid under protest, for a special assessment in an improvement district, are not for a "tax, license, or other demand for public revenue," such payment, if it can form the basis of an action at all, stands as a mere demand against the city, not suable until after presentation to and disallowance by the city council, which presentation and disallowance must appear upon the face of the complaint. *Leggat v. City of Butte*, 54 M 137, 140, 168 P 38.

This section was evidently intended to cover claims against the city arising in the ordinary course in carrying on the city government, in providing for the city's welfare in sundry directions, and in transacting the business and economic affairs of the city, but not on such contracts as are specifically provided for, which it must be presumed are designed to contain their own specific provisions, and, among other material and essential conditions, stipulations respecting the time and manner of the payment of the consideration on the part of the city. *City of Forsyth v. Crellin*, 210 F 835, 838.

Where a city has reached its limit of

indebtedness as prescribed by section 6, article XIII, of the constitution, any further indebtedness incurred is void; thereafter it is without power to allow claims against it and draw warrants in payment thereof, but under this section and the next section, may operate under the pay-as-you-go plan, i.e., by payment in cash. *Commonwealth Public S. Co. v. Deer Lodge*, 96 M 15, 28 P 2d 472.

Id. By enacting this and the next sections, authorizing cities to operate on a cash basis where they have reached the constitutional limit of indebtedness, the legislature did not attempt what it has no power to do: permit them to create indebtedness in excess of such limit, but provided a device by which, without creating an additional indebtedness, they may function on a cash basis.

References

Cited or applied as section 4812, political code, before amendment, in *Helena W. W. Co. v. City of Helena*, 27 M 205, 208, 70 P 513; *Dawes v. City of Great Falls*, 31 M 9, 13, 77 P 309; as amended, in *Helena W. W. Co. v. City of Helena*, 31 M 243, 246, 78 P 220; as section 3288, revised codes, in *Palmer v. City of Helena*, 40 M 498, 505, 107 P 512; *State ex rel. Driffill v. City of Anaconda*, 41 M 577, 578, 111 P 345; *Harvey v. Town of Townsend*, 57 M 407, 409, 18 P 897; *Campbell v. City of Helena*, 92 M 366, 16 P 2d 1.

5079. Allowance and payment of claims—cash basis. All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of three per cent. provided in section 6 of article XIII of the constitution of the state of Montana, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfilment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness

and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R. C. M. 1921.

Operation and Effect

Where a city had exceeded its debt limit, it could not incur an indebtedness not payable from a specially authorized tax, but payable from funds previously appropriated, under an agreement that the claimants should accept warrants in payment of their claims, and if the warrant should not be paid, the city should not be liable thereof. The payment of such claims on the theory that the appropriation by ordinance was an assignment of the funds so appropriated for the payment of the claims was unauthorized. *Helena W. W. Co. v. City of Helena*, 27 M 205, 208, 70 P 513.

The provisions of this and the following section do not apply to a claim for damages arising from personal injuries. *Dawes v. City of Great Falls*, 31 M 9, 13, 77 P 309.

Where a city has reached its limit of indebtedness as prescribed by section 6, article XIII of the constitution, any further indebtedness incurred is void; thereafter it is without power to allow claims against it and draw warrants in payment thereof, but under this section and the preceding section, may operate under the pay-as-you-go plan, i.e., by payment in cash. *Commonwealth Public S. Co. v. Deer Lodge*, 96 M 15, 28 P 2d 472.

Id. By enacting this and the next section, authorizing cities to operate on a cash basis where they have reached the constitutional limit of indebtedness, the legislature did not attempt what it has no power to do: permit them to create indebtedness in excess of such limit, but provided a device by which, without creating an additional indebtedness, they may function on a cash basis.

What Are Current Expenses

The term "current" was doubtless employed by the legislature to distinguish the common, recurring, running expenses of a city from such expenses as partake of the nature of an investment, or such as are to be incurred in a substantial or permanent improvement. *Helena W. W. Co. v. City of Helena*, 31 M 243, 248, 78 P 220.

Id. The determination of what is a current expense is for the courts; but the determination of the city council as to whether a particular current expense is

reasonable and necessary is not subject to review by the courts in the absence of fraud or abuse of discretion. See also *State ex rel. Rowling v. Mayor of Butte*, 43 M 321, 335, 117 P 604.

An expenditure to install and operate a water system to belong to the city is not for current expenses, and not authorized by this statute. *Helena W. W. Co. v. City of Helena*, 31 M 243, 248, 78 P 220.

This section and the one following were enacted to permit cities, which have reached their constitutional limit of indebtedness, to conduct their affairs upon a cash basis and pay reasonable and necessary current expenses out of current revenues, or in cash in advance, upon requiring indemnity in the form of a cash deposit, to be held by the treasurer. *Palmer v. City of Helena*, 40 M 498, 505, 107 P 512.

Id. Under this and the next succeeding section, a city, which is indebted in excess of the limit prescribed by the constitution, is permitted to conduct its affairs upon a cash basis and pay "reasonable and necessary current expenses from its current revenues," but the authority of such a city extends no further than to make expenditures both reasonable and necessary for the corporate existence of the city; in other words, the right to expend public money is limited to those items of expense which may properly be designated as "living expenses."

Id. A city which is indebted beyond the constitutional limitation may not use its surplus revenues, no matter from what source derived, to acquire an electric light plant to supply itself and its inhabitants with light, where a company, operating both gas and electric light systems, under a franchise from the city, has ample facilities to meet all requirements. An expenditure of this character does not fall within the definition of "reasonable and necessary current expenses" which a city laboring under such disability, has power to incur under this and the following sections.

A city which, having reached the constitutional limit of indebtedness, finds itself in financial straits, will not be heard to say, in defense of its violation of a civil service statute in removing a fireman contrary to its provisions, that it did so to reduce expenses, where it has failed to take advantage of this and the following section, authorizing cities in such condition to pay their running expenses from current revenues upon a cash

basis. *State ex rel. Driffill v. City of Anaconda*, 41 M 577, 584, 111 P 345.

References

Cited or applied as section 3287, revised

codes, in *Larkin v. City of Butte*, 52 M 410, 413, 158 P 316; *State ex rel. O'Connor v. McCarthey*, 86 M 100, 108, 282 P 1045; *Campbell v. City of Helena*, 92 M 366, 16 P 2d 1.

5080. Defective highways and public works—notice of claim for injuries. Before any city or town in this state shall be liable for damages for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect in any bridge, street, road, sidewalk, culvert, park, public ground, ferry-boat, or public works of any kind in said city or town, the person so alleged to be injured, or some one in his behalf, shall give to the city or town council, or trustee, or other governing body of such city or town, within sixty days after the alleged injury, notice thereof; said notice to contain the time when and the place where said injury is alleged to have occurred.

History: En. Sec. 1, Ch. 93, L. 1903; re-en. Sec. 3289, Rev. C. 1907; re-en. Sec. 5080, R. C. M. 1921.

Amendment of Notice

The notice required by this section is not subject to amendment, and at the expiration of the time limited by that section the claimant is bound by the one he has served, and his right to institute an action is to be tested by it and none other. *Berry v. City of Helena*, 56 M 122, 128, 182 P 117.

"Any Defect"

The words "any defect in any sidewalk," found in this section, refer to any and every defect, deficiency, or obstruction likely to interfere with the proper use of the walk, such as an accumulation of snow and ice, etc., and not merely to some structural deficiency in the walk itself. *Tonn v. City of Helena*, 42 M 127, 133, 111 P 715.

Burden on Plaintiff to Show That Notice Was Given

In an action against a city to recover for personal injuries alleged to have been sustained by reason of the defective condition of a sidewalk, the plaintiff cannot prevail without affirmatively establishing the fact that the notice required by this section has been given, no matter how meritorious his claim may be. Where no testimony whatever was presented as to who filed, presented, or received the notice, it was fatal to a judgment in favor of the plaintiff. *Murray v. City of Butte*, 51 M 258, 265, 151 P 1051.

Constitutionality

This section, requiring the giving of notice of a personal injury, occasioned by a defective sidewalk, as a prerequisite to the recovery of damages from the city or town, is not unconstitutional as making an unjust discrimination in favor of munici-

palities and against all others who may be defendants in personal injury actions; the classification made by the section is not unreasonable, and, where all cities and towns are treated alike, it cannot be said that the particular city or town in which the injury occurred is granted a special immunity, where the notice provided for has not been given. *Tonn v. City of Helena*, 42 M 127, 133, 111 P 715.

Filing Notice

Where, in an action against a city for personal injuries, a notice of claim for damages, marked "filed" by the city clerk, and bearing an indorsement that the claim had been referred to the judiciary committee of the council and disallowed, was received in evidence without objection, the requirements of this section were sufficiently complied with. *O'Flynn v. City of Butte*, 36 M 493, 498, 93 P 643.

This section is sufficiently complied with by filing the notice with the city clerk, and the failure of the city council to meet for sixty days does not defeat the injured party's right to sue. *Tiggerman v. City of Butte*, 44 M 138, 142, 119 P 477; *Hensley v. City of Butte*, 36 M 32, 37, 92 P 34. Distinguished.

Neither indorsement nor signature by the city clerk is essential to prove the giving of the notice to a city required by this section. The fact may be established by any competent evidence, such as that the filing mark was in the handwriting of the city clerk or one of his deputies, that it was made at his office, or that the notice had been called to the attention of the council. *Murray v. City of Butte*, 51 M 258, 265, 151 P 1051.

Injuries to Property—Notice Not Required

This section, having been enacted under the title, "an act relating to actions

against cities and towns for damages to persons injured on streets and other public grounds by reason of the negligence of any public officer, agent, or employee in any city or town in Montana" (laws 1903, c. 93), such section applies only to injuries to persons, as distinguished from injuries to property. *Kelly v. City of Butte*, 44 M 115, 118, 119 P 171; overruling *Butte Machinery Co. v. City of Butte*, 43 M 351, 116 P 357.

Must Allege Giving of Notice

Compliance with this section is a necessary prerequisite to plaintiff's right of action, and an appropriate allegation of such compliance is an indispensable part of the statement of a cause of action. *Berry v. City of Helena*, 56 M 122, 128, 182 P 117.

Purpose

The purpose of this section is to require that notice of any injury arising from a defective sidewalk, street, etc., shall be given to the city, not alone that the city may have an opportunity to examine the place where the injury occurred, and consult those who may be witnesses, but as well to enable the city to settle the claim and avoid the expense of litigation if investigation discloses a legal liability on its part. For this reason it is not sufficient that the city officers had notice of the defect. It is knowledge of the injury which the statute requires shall be brought to the attention of the city authorities. *Tonn v. City of Helena*, 42 M 127, 133, 111 P 715; *Fby v. City of Lewistown*, 55 M 113, 122, 173 P 1163.

A city of this state is one of its governmental agencies, and enjoys such privileges and is subject to such liabilities only as are imposed by law, and when conditions are attached to the enforcement of such liabilities as are imposed upon a city, the latter may rightfully insist upon a strict compliance with the conditions as in case of a notice of injury required by this section. *Berry v. City of Helena*, 56 M 122, 126, 182 P 117.

Id. This section is not in any sense a statute of limitations, which the municipality may waive or not, as it may choose, but its provisions are intended for the benefit of the public, and the notice prescribed must have been given before any liability whatever attaches.

The purpose of this section, requiring the giving of notice to a city or town of an injury received because of a defect in a sidewalk as a condition precedent to liability for damages, is to give the city an opportunity to have the place where the accident occurred examined, consult witnesses and to enable it to settle the claim

if the investigation discloses a legal liability on its part. *Nagle v. City of Billings*, 80 M 278, 282 et seq., 260 P 717.

The requirement of this section that the notice which one must give to a city before he may maintain an action against it for damages for injuries sustained must contain the time when and the place where the accident occurred, is for the purpose of enabling the city, or its representatives, to examine the place and investigate the question of its liability, if any. *Campbell v. City of Helena*, 92 M 366, 381 et seq., 16 P 2d 1; *Lynch v. City of Butte*, 99 M 287, 43 P 2d 652.

Variance Between Description of Place in Notice to City and Proof at Trial—When Immaterial

Where city officials apparently experienced no difficulty in locating the place on a sidewalk at which a pedestrian suffered an injury by falling, from a description thereof in the notice of the accident to the city, the fact that there was a difference of four feet in the place described and that shown by the evidence, did not warrant a nonsuit on the ground of variance; the variance was immaterial. *Lynch v. City of Butte*, 99 M 287, 290, 43 P 2d 652.

What Is Sufficient Notice

The giving of notice of injury is *prima facie* sufficient where, upon its face, it purports to have been given, in the plaintiff's behalf, by the attorneys who brought the action for him. *McEnaney v. City of Butte*, 43 M 526, 533, 117 P 893.

A notice, signed in behalf of the injured person by his attorney, is sufficient under the provisions of this section, the acts of the attorney being presumed to be regular and by authority, especially where the objection to the signature was not made in the trial court. *Pullen v. City of Butte*, 45 M 46, 55, 121 P 878.

Matter additional to that required by this section to be stated in the notice must be treated as surplusage. *Irving v. Town of Stevensville*. 51 M 44, 46, 149, P 483.

Where, from the description of the place at which an accident due to a defective sidewalk happened, given in the notice to the city council required by statute, it inferentially, though not in terms, appeared that the injury occurred within the city limits, it was sufficient; the members of the council being presumed to know the limits of their jurisdiction. *Murray v. City of Butte*, 51 M 258, 264, 151 P 1051.

The notice which must be given a city by one who claims to have sustained personal injuries by reason of a fall upon an ice-covered sidewalk must contain, among other things, an accurate statement of the

time when they were received, on giving the time as "on or about" a certain day, when in fact the accident had occurred two days later, not meeting the requirement. *Berry v. City of Helena*, 56 M 122, 127, 182 P 117.

When a notice of the nature of the above (personal injury) so designates the place where a pedestrian was injured because of a defect in the sidewalk that the officers of the city or town, as men of common understanding and intelligence, can by the exercise of reasonable diligence find the place, it sufficiently complies with the provisions of this section. *Nagle v. City of Billings*, 80 M 278, 282 et seq., 260 P 717.

Id. Held, on appeal by plaintiff in a personal injury action against a city from an order granting defendant city a new trial on the ground that the notice served by plaintiff on defendant in pursuance to this section was insufficient, that the notice, stating that the injury occurred "at the corner of Fifth avenue and 32nd street," describing the defect in a gutter covering which caused plaintiff to be thrown to the ground, not, however, set-

ting forth at which one of the four corners of the street intersection the particular gutter covering could be found, was sufficient under the rule stated in the paragraph above, and that the court erred in granting a new trial.

When Notice is Not Necessary

Where plaintiff sued defendant city for flooding his mine by reason of a defective plan adopted for the construction of a sewer, the cause of injury was not a "defect," within the meaning of this section. *Kelly v. City of Butte*, 44 M 115, 117, 119 P 171.

Held, that this section, requiring as a condition precedent to the right to maintain an action against a city for damages for injuries to persons on the streets or other enumerated places in the city, a notice of the claim, does not apply in an action where the injury was the result of drinking contaminated city water from which he contracted typhoid fever. (District Judge W. H. Meigs, sitting in place of Mr. Justice Galen, disqualified, dissenting.) *Campbell v. City of Helena*, 92 M 366, 381 et seq., 16 P 2d 1.

5080.1. Non-liability of municipality for injuries caused by accumulations of snow or ice in streets or public ways. No city or town in this state shall be liable in damages for any negligence or mis-management on its part, or for any negligence or mis-management on the part of any officer, agent, servant, or employee of such city or town in causing, permitting or allowing snow or ice to remain or accumulate on or in any road, street, alley, sidewalk, cross walk, public way, or gutter within said city or town.

History: En. Sec. 1, Ch. 132, L. 1929.

NOTE.—A like section was enacted in 1923 (see ch. 45, L. 1923). This has been omitted.

Operation and Effect

Where the gravamen of the complaint in a personal injury action against a city was its negligence in permitting the obstruction of a sidewalk compelling plaintiff to go into the street where she fell

on an accumulation of snow and ice, defendant city may not in defense rely upon this section, declaring cities and towns not liable in damages for injuries due to snow or ice upon sidewalks or streets. *Bensley v. Miles City*, 91 M 561, 563, 9 P 2d 168.

References

Childers v. Deschamps et al., 87 M 505, 518, 290 P 261.

5081. City warrants—rate of interest. When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must indorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance, and not to exceed six per cent. per annum.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R. C. M. 1921.

References

State ex rel. O'Connor v. McCarthy, 86 M 100, 108, 282 P 1045.

5082. Call for payment. When there are moneys in the city or town treasury applicable to the payment of any warrants drawing interest, suf-

ficient to pay the same, the city or town treasurer must give notice in some newspaper published in such city or town, or if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer, stating that he is ready to pay the said warrants, and giving the number of the warrants to be paid. From the time of the first publication or posting of such notice the warrants so called shall cease to draw interest.

History: En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907; re-en. Sec. 5082, R. C. M. 1921.

5083. Registry of warrants. Upon the presentation of any warrant or warrants indorsed, as specified in section 5081 of this code, it shall be the duty of the city treasurer to record the same in a book to be provided for that purpose, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof, and all warrants to be redeemed, as provided for in the preceding section, shall be redeemed in the order of their registration, beginning with the date of the warrant so first registered.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R. C. M. 1921.

CHAPTER 386

BUDGET SYSTEM FOR CITIES AND TOWNS

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| Section 5083.1. | Municipal budget law—application—definitions. |
| 5083.2. | Fiscal year defined. |
| 5083.3. | Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file. |
| 5083.4. | Tabulation by clerk of expenditure program—classifications, items included in. |
| 5083.5. | Consideration of budget by council—notice of budget meeting. |
| 5083.6. | Hearings on budget—adoption—fixing of tax levy. |
| 5083.7. | Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget. |
| 5083.8. | Emergency expenditures—notice and hearing—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations. |
| 5083.9. | Clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources. |
| 5083.10. | State examiner to make rules and regulations for carrying out act—accounting systems. |
| 5083.11. | Construction of act. |
| 5083.12. | Violation of act constitutes misdemeanor. |

5083.1. Municipal budget law—application—definitions. The provisions of this act shall apply to all cities in this state, and it may be referred to as the “Municipal Budget Law.” As used herein the terms “municipal corporation” or “municipality” shall mean city; the term “council” shall mean city council or city commission; the term “clerk” shall mean the clerk of the city.

History: En. Sec. 1, Ch. 121, L. 1931.
Not Applicable to Cities Under Commission-Manager Form

The municipal budget law does not ap-

ply to cities operating under the commission manager form. Attorney General's Opinions, No. 364, Vol. 15.

5083.2. Fiscal year defined. The fiscal year of each and every city in this state commences on the first day of July of each year and ends on the last day of June of each year.

History: En. Sec. 2, Ch. 121, L. 1931.

5083.3. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file. On or before the first day of July of each year the clerk of each city shall notify in writing each official, elective or appointive, in charge of an office, department, service or institution of the municipality to file with such clerk, on or before the tenth day of July following, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service or institution for the current fiscal year. The council shall submit to the clerk the estimate of expenditures for all purposes for such council. The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from any funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts, and of maintaining the same, and of installing lighting systems in special lighting districts, and maintaining the same; but there shall not be included in such estimate, nor in either the preliminary or final budget of any municipality, any part of any such cost which is to be paid by special assessments against the property within such districts, or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property therein.

The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be thereafter held.

The estimates required in this section shall be submitted on forms provided by the clerk, and prescribed by the state examiner, and may only be varied or departed from with permission and approval of said officer. The city treasurer shall prepare the estimates for interest and debt reduction. The clerk shall prepare all other estimates the preparation of which properly falls within the duties of his office.

It shall be the duty of each of said officials to file such estimates within the time and in the manner provided in said form and notice, and the clerk shall deduct and withhold, as a penalty, from the salary or compensation of each official failing or refusing to file such estimates as herein provided, the sum of ten dollars for each day of delay; provided, that the total penalty against any one official shall not exceed fifty dollars (\$50.00) in any one year; and provided further, that in the absence or disability of any such official the duties required herein shall devolve upon the official or employee in charge of such office, department, service or institution for the time being. The said notice shall contain a copy of this penalty clause.

History: En. Sec. 3, Ch. 121, L. 1931.

5083.4. Tabulation by clerk of expenditure program—classifications, items included in. From such estimates the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year, and the sources of revenue by which it is to be financed. Such tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution

for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of such last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

Such estimates, appropriations and expenditures shall be classified under the general classes of (1) salaries and wages; (2) maintenance and operation; (3) capital outlay; (4) interest and debt redemption; (5) miscellaneous; and (6) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be thereafter held.

Within the general class of "salaries and wages" each salary shall be set forth separately together with the title or position of the recipient, provided that an unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per diem for each class or kind of labor shall be set forth. Expenditures under the general class of "maintenance and operation" shall be classified according to a standard classification to be established by the state examiner. Expenditures for "capital outlay" shall set forth and describe each object of expenditure separately. Under the general class of "interest and debt redemption" proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of "miscellaneous" expenditures for all purposes not listed in, or which cannot properly be assigned to any of the foregoing general classes, shall be set forth and itemized in detail.

The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 4, Ch. 121, L. 1931.

5083.5. Consideration of budget by council—notice of budget meeting. The said tabulation shall be submitted to the council by the clerk on or before the twentieth day of July. Upon receipt thereof the council shall immediately consider the same in detail, and shall on or before the twenty-fifth day of July make any revisions, reductions, additions or changes therein that they deem advisable, and such tabulation, with such revisions, reductions, additions or changes as have been made therein, as herein provided, shall constitute the preliminary budget of the municipality for the fiscal year which it is intended to cover. The council shall then cause a notice to be published stating that said council has completed their preliminary municipal budget for the current fiscal year, and that said budget

has been placed on file and is open to inspection in the office of the clerk of the municipality, and that said council will meet on the Wednesday immediately preceding the second Monday in August thereafter, for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting will be held, and that any taxpayer may appear thereat and may be heard for or against any part of said budget. Said notice shall be published at least one time in the official newspaper of the municipality, or if there be none, then in a newspaper of general circulation in the county in which the municipality is situated.

History: En. Sec. 5, Ch. 121, L. 1931.

5083.6. Hearings on budget—adoption—fixing of tax levy. On the Wednesday immediately preceding the second Monday in August the council shall meet at the time and place designated in the notice provided in section 5083.5, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing may be continued from day to day but must be concluded not later than the second Monday in August and prior to the fixing of tax levies by such council. The council shall have power to call in the official in charge of any office, department, service or institution, at the time the estimates for their respective offices are under consideration, for examination concerning such estimates, and such official shall be called in by such council upon the request of any taxpayer for questioning, either by the council or any taxpayer upon such estimates.

Upon the conclusion of such hearing the council shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the council.

Said budget as finally adopted shall specify the fund or funds against which warrants may be issued for the expenditures so authorized, respectively, and the aggregate of all expenditures authorized against any fund shall not exceed the estimated revenues to accrue to such fund during the current fiscal year from all sources including taxation.

On the second Monday in August, and after adoption of such final budget, the council shall fix the amount of the tax levy for each fund necessary to raise the amount of estimated expenditures to be made therefrom, as finally determined, less the estimated revenues from sources other than taxation, available surpluses and expenditures that are to be made from bond issues.

The clerk shall immediately forward a copy of the final budget together with the tax levies to the state examiner.

History: En. Sec. 6, Ch. 121, L. 1931.

5083.7. Appropriations—transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget. The estimates of expenditures, itemized and classified as required in section 5083.4, and as finally fixed and adopted by said council, shall constitute the appropriations for the municipality for the fiscal year intended to be covered thereby, and the council and every other municipal official, shall be limited in the making of expenditures or incurring of liabilities to the amount of

such detailed appropriations and classifications, respectively; provided that upon a resolution adopted by the council at a regular or special meeting, and entered upon its minutes, transfers or revisions within the general class of "salaries and wages" and of "maintenance and support" may be made, provided, that no salary shall be increased above the amount appropriated therefor. Transfers between the general classes provided in section 5083.4 shall not be permitted, provided and except that in the case of appropriations to be expended from municipal road or bridge funds, any transfer between or among the general classes of (1) salaries and wages, (2) maintenance and support, and (3) capital outlay, may be made.

Moneys received from borrowings shall be used for no other purpose than that for which borrowed, except that if any surplus remain after the accomplishment of the purpose for which borrowed it shall be used to redeem the municipal debt. Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available, and where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The council shall not approve any claim, and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the city fourfold the amount of such claim or warrant, which shall be recovered in an action against such officer or officers, or all of them, and their several sureties on their official bonds, and it shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.

History: En. Sec. 7, Ch. 121, L. 1931.

5083.8. Emergency expenditures—notice and hearing—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations. In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present at any meeting, the time and place of which all of the members shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money re-

quired to meet such emergency and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the municipality, and if there be none then in a newspaper of general circulation in the county in which the municipality is situated. Upon the conclusion of such hearing, if the council shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the council present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject, however, to the following limitations: No expenditure shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said municipality feeling aggrieved by said order may appeal therefrom to the district court for the county in which the municipality is situated, by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk of said municipality. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any liability thereunder, until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this Act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of any public property the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the municipality, or to meet mandatory expenditures required by law, the council may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the city treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other city warrants.

The clerk shall include in his annual tabulation to be submitted to the council the total amount of emergency warrants issued during the preceding fiscal year, and the council shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided, further, that the council may submit the question of funding such emergency warrants at an election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 8, Ch. 121, L. 1931.

5083.9 Clerk's report of expenditures and liabilities against budget appropriations, receipts from taxes and other sources. At the first meeting of the council, in each month, the clerk shall submit to the council a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes, and in detail the receipts from all other sources by each fund for the same period.

History: En. Sec. 9, Ch. 121, L. 1931.

5083.10. State examiner to make rules and regulations for carrying out act—accounting systems. The state examiner is hereby empowered, and it is made his duty to make such rules, regulations and classifications, and prescribe such forms as may be necessary to carry out the provisions of this Act, to define what expenditures shall be chargeable to each budget

account, and to establish such accounting and cost systems as may be necessary to provide accurate budget information.

History: En. Sec. 10, Ch. 121, L. 1931.

5083.11. Construction of act. This act shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: En. Sec. 11, Ch. 121, L. 1931.

5083.12. Violation of act constitutes misdemeanor. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 121, L. 1931.

CHAPTER 387

JUDGMENTS—RESPONSIBILITY FOR DAMAGE BY RIOTS

Section 5084. Judgments against cities and towns—mode of payment.

5085. Judgment may be funded.

5086. Cities and towns responsible for damages by mobs and riots.

5084. Judgments against cities and towns—mode of payment. On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must, by ordinance, direct that the amount of such judgment be paid out of the general fund, and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same, and the council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of three years from its presentation, if there is not sufficient money as aforesaid in the general fund to pay the same.

History: En. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907; re-en. Sec. 5084, R. C. M. 1921. Cal. Pol. C. Sec. 4455.

Operation and Effect

Under this and the following sections, the first of which makes it the duty of a city or town council to levy sufficient tax to pay a judgment against the municipality within three years where there is not sufficient money in the general fund to pay it, whereas the next section author-

izes the council to fund the debt if the judgment exceeds \$10,000, the board of councilmen is vested with discretionary power to proceed in any of the several methods of procedure prescribed, and may therefore not be compelled by the judgment creditor, through writ of mandate, to make a specific levy for any one year to satisfy the judgment. State v. District Court et al., 97 M 523, 525 et seq., 37 P 2d 329.

5085. Judgment may be funded. If any judgment rendered against any town or city exceeds the sum of ten thousand dollars, the council may fund the same as other indebtedness against the city or town is funded.

History: En. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907; re-en. Sec. 5085, R. C. M. 1921.

Operation and Effect

Under section 5084 and this section, the first of which makes it the duty of a city or town council to levy a sufficient tax to pay a judgment against the municipality within three years where there is not sufficient money in the general fund to pay it, whereas this section au-

thorizes the council to fund the debt if the judgment exceeds \$10,000, the board of councilmen is vested with discretionary power to proceed in any of the several methods of procedure prescribed, and may therefore not be compelled by the judgment creditor, through writ of mandate, to make a specific levy for any one year to satisfy the judgment. State v. District Court et al., 97 M 523, 526 et seq., 37 P 2d 329.

5086. Cities and towns responsible for damages by mobs and riots. Every city or town is responsible for injuries to real or personal property within its corporate limits, done or caused by mobs or riots.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907; re-en. Sec. 5086, R. C. M. 1921. Cal. Pol. C. Sec. 4452.

Operation and Effect

The sole purpose of this section was to create a liability which did not exist at common law, and to impose a new burden upon municipal corporations. It does not indicate a legislative intent to exempt cities from liability for all other torts than those mentioned therein. *May v. City of Anaconda*, 26 M 140, 142, 66 P 759.

The liability of a city for damages to property through riots or mobs is absolute, except where the plaintiff owner by his own unlawful conduct induced the injury for which he seeks damages, in which

event he cannot recover. *Butte Miners' Union v. City of Butte*, 58 M 391, 401, 194 P 149.

Id. The bare fact that the plaintiff labor union had stored arms and ammunition in its building to protect its property and the lives of its members was not alone sufficient to defeat its right to recover damages, since the right to protect property and to bear arms in defense of person and property is guaranteed by the constitution.

Id. The purpose of this statute is not only to create municipal liability, but to instill in the minds of every person liable to contribute to the public expense, a will to discourage violence and to stimulate effort to preserve public safety.

CHAPTER 388

JUDICIAL POWERS—POLICE COURTS

Section 5087. Police court established.

5088. Jurisdiction of police courts.

5089. Jurisdiction for violation of ordinances, and civil and criminal jurisdiction.

5090. When judge cannot act.

5091. Preliminary examinations—proceedings in.

5092. Proceedings in criminal actions.

5093. Proceedings in civil actions.

5094. Who to prosecute.

5087. Police court established. A police court is established in each city or town, which court must always be open, except upon non-judicial days, and upon such days it may transact criminal business only.

History: En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907; re-en. Sec. 5087, R. C. M. 1921.

Operation and Effect

Police courts, like justices' courts, are courts of limited jurisdiction and have only such authority as is expressly conferred upon them. *State ex rel. Marquette v. Police Court*, 86 M 297, 308, 283 P 430.

References

Cited or applied as section 4910, political code, in *State ex rel. City of Butte v. District Court*, 37 M 202, 204, 95 P 841; as section 3296, revised codes, in *Grant v. Williams*, 54 M 246, 251, 169 P 286; *Sham-pagne v. Keplinger*, 78 M 114, 119, 252 P 803.

5088. Jurisdiction of police courts. The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. Petit larceny.

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.

3. Breaches of the peace, riots, affrays, committing wilful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both fine and imprisonment.

4. Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.

Said police court shall have no jurisdiction of any civil cause, except as provided in the next section.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R. C. M. 1921. Cal. Pol. C. Sec. 4426.

Operation and Effect

A justice of the peace had jurisdiction under the above section, as it existed prior to its amendment, over misdemeanors committed in a town or city within his township. In re Ryan, 20 M 64, 67, 50 P 129.

This section and section 5091 merely confer jurisdiction upon the police court or judge in the cases and proceedings enumerated; the compensation to which he is entitled is provided for elsewhere in the

code. State ex rel. Rowe v. District Court, 44 M 318, 322, 119 P 1103.

References

Cited or applied as section 4911, political code, as amended, in In re Graye, 36 M 394, 397, 93 P 266; before amendment in State ex rel. City of Butte v. District Court, 37 M 202, 204, 95 P 841; as section 3297, revised codes, in State ex rel. Rowe v. District Court, 45 M 205, 208, 122 P 270; Grant v. Williams, 54 M 246, 251, 169 P 286; Champagne v. Keplinger, 78 M 114, 119, 252 P 803; State ex rel. Marquette v. Police Court, 86 M 297, 308, 283 P 430.

5089. Jurisdiction for violation of ordinances, and civil and criminal jurisdiction. The police court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city or town, both civil and criminal, which must be prosecuted in the name of the city or town;

2. Of any action for the collection of taxes and assessments levied for city or town purposes; or for the erection or improvement of public buildings; for the laying out, or opening, or improving any public street or sidewalk, alley, or bridge; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made or ordered by the city or town within its limits, when the amount of the tax or assessments sought to be collected against the person assessed does not exceed three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action;

3. Of an action for the collection of money due to the city or town or from the city or town to any person, when the amount sought to be collected, exclusive of interest and costs, does not exceed three hundred dollars;

4. For the breach of any official bond given by any city or town officer, and for the breach of any contract, and any action for damages in which the city or town is a party, or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city or town; and upon all bonds given upon any appeal taken from the judgment of the court in any action above named, where the amount claimed, exclusive of costs, does not exceed three hundred dollars;

5. For the recovery of personal property belonging to the city or town, when the value of the property (exclusive of the damages for the taking or detention) does not exceed three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city or town.

History: En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907; re-en. Sec. 5089, R. C. M. 1921. Cal. Pol. C. Sec. 4427.

NOTE.—For history of earlier acts see State ex rel. Rowe v. District Court, 45 M 205-209, 122 P 270.

Operation and Effect

Non-compliance with an ordinance, making it the duty of an occupant of premises within the limits of a city to keep a sidewalk free from snow and ice, is not in its essence a crime or misdemeanor, and ac-

tions arising therefrom are properly prosecuted in the name of the city. *City of Helena v. Kent*, 32 M 279, 290, 80 P 258; *State ex rel. Streit v. Justice Court*, 45 M 375, 381, 123 P 405. See also *State ex rel. City of Butte v. District Court*, 37 M 202, 206, 95 P 841.

The police court of a city or town has exclusive jurisdiction of all proceedings for the violation of an ordinance defining vagrancy and prescribing punishment for such offense, and prosecutions thereunder must be conducted in the name of the city. *State ex rel. City of Butte v. District Court*, 37 M 202, 208, 95 P 841.

Id. Police courts have concurrent jurisdiction with justices' courts to punish vagrancy as a crime against the state, and such prosecutions must be instituted and conducted in the name of the state.

Prosecutions for violations of local ordinances must be conducted in the name of the municipality. *State ex rel. Streit v. Justice Court*, 45 M 375, 380, 123 P 405.

Id. A justice of the peace, designated by the town council to act as police judge, has exclusive jurisdiction of all cases arising under the ordinances, in addition to his jurisdiction as a justice.

A police magistrate had jurisdiction to determine the validity of a town ordinance for a violation of which he sentenced plaintiff in an action for false imprisonment to serve a term in the county jail. *Shampagne v. Keplinger*, 78 M 114, 119, 252 P 803.

Police courts, like justices' courts, are courts of limited jurisdiction and have only such authority as is expressly conferred upon them. *State ex rel. Marquette v. Police Court*, 86 M 297, 283 P 430.

The mere fact that an action for the violation of a city ordinance was entitled in the name of the "town" of H, whereas in the body of the complaint it was alleged that defendant had violated an ordinance of the named city, did not deprive the police court of jurisdiction; such a defect being curable by amendment prior to trial halted by application for writ of prohibition. *State ex rel. Moreland v. Police Court*, 87 M 17, 21, 285 P 178.

References

Cited or applied as section 3298, revised codes, in *State ex rel. Rowe v. District Court*, 45 M 205, 208, 209, 122 P 270; *Grant v. Williams*, 54 M 246, 251, 169 P 286.

5090. When judge cannot act. In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace residing in the city or town to act in his place and stead.

History: En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907; re-en. Sec. 5090, R. C. M. 1921. Cal. Pol. C. Sec. 4428.

5091. Preliminary examinations—proceedings in. Proceedings in preliminary examinations in criminal actions in the police court must be had in conformity with the provisions of sections 11773 to 11797 of the penal code.

History: En. Sec. 4914, Pol. C. 1895; re-en. Sec. 3300, Rev. C. 1907; re-en. Sec. 5091, R. C. M. 1921.

References

Cited or applied as section 3300, revised codes, in *State ex rel. Rowe v. District Court*, 44 M 318, 322, 119 P 1103.

5092. Proceedings in criminal actions. Proceedings in police courts in criminal actions triable in such courts are regulated by sections 12302 to 12347 of the penal code.

History: En. Sec. 4915, Pol. C. 1895; re-en. Sec. 3301, Rev. C. 1907; re-en. Sec. 5092, R. C. M. 1921. Cal. Pol. C. Sec. 4431.

References

City of Miles City v. Drum, 60 M 451, 452, 199 P 719; *State ex rel. Marquette v. Police Court*, 86 M 297, 308, 283 P 430.

5093. Proceedings in civil actions. The proceedings of the police court in civil actions are regulated by sections 9725 to 9728 of the code of civil procedure.

History: En. Sec. 4916, Pol. C. 1895; re-en. Sec. 3302, Rev. C. 1907; re-en. Sec. 5093, R. C. M. 1921. Cal. Pol. C. Sec. 4432.

5094. Who to prosecute. The city attorney must prosecute all cases for the violation of any ordinance, and prosecute, conduct, and control all proceedings in cases mentioned in section 5089 of this code, both in the police court and on appeal therefrom to the district court.

History: En. Sec. 4917, Pol. C. 1895; re-en. Sec. 3303, Rev. C. 1907; re-en. Sec. 5094, R. C. M. 1921.

nances must be conducted in the name of the municipality, and by its prosecuting officer. State ex rel. Streit v. Justice Court, 45 M 375, 380, 123 P 405.

Operation and Effect

Prosecutions for violations of local ordi-

CHAPTER 389

MUNICIPAL COURTS

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5094.1. Municipal courts—cities where creation authorized—adoption of provisions concerning. There is hereby created in all cities in the state of Montana with a population of twenty thousand (20,000) or more persons, according to the last federal census, a court to be known and designated as municipal court of the city of (designating the name of the city) of the state of Montana. Such court shall be a court of record; **provided**, however, that the provisions of this act shall apply only after the governing body or council of such city or cities shall have elected by a two-thirds majority vote to adopt the provisions hereof by ordinance and in said ordinance shall have provided the manner of, and time at which, said municipal court shall be established. Said ordinance shall be consistent with the provisions of this act.

History: En. Sec. 1, Ch. 177, L. 1935.

5094.2. Jurisdiction. Said court shall have jurisdiction coordinate and coextensive with the justice courts of the county wherein said city is located, and shall also, in addition thereto, have exclusive original jurisdiction of all actions and proceedings, both civil and criminal, mentioned and provided for in section 5089, from and after the first Monday in May, 1937. Such municipal court shall also have concurrent jurisdiction with the district court within their respective counties in forcible entry and unlawful detainer.

History: En. Sec. 2, Ch. 177, L. 1935.

5094.3. Election of judges—term of office. There shall be elected at the general city election in the year 1936 in all cities with a population of twenty thousand (20,000) and over, one judge of municipal court. The term of such judge so elected shall commence on the first Monday in May, 1936, and terminate on the first Monday in May, 1938. Thereafter, judges of municipal courts shall be elected at the general city elections in all even numbered years. Such judges shall hold office for the term of two years from the first Monday of May in the year in which they are elected and until their successor is elected and qualified. All elections of municipal judges shall be under and governed by the laws applicable to the election of city officials, except that the names of candidates for municipal judge shall be placed on the ballot to be used at such election without any party designation or any statement, measure or principle which the candidate advocates or any slogan after his name.

History: En. Sec. 3, Ch. 177, L. 1935.

5094.4. Qualifications and salary. Municipal judges shall have the same qualifications as judges of the district court and must be a resident and voter in the city for which he is elected at the time of his election. The salary of such judges shall be three thousand (\$3,000.00) dollars annually, payable monthly by the city treasurer of the city in which such court is.

History: En. Sec. 4, Ch. 177, L. 1935.

5094.5. Court room and supplies. A room for such court, with necessary furniture, fixtures and supplies, shall be provided by the county wherein said city is located.

History: En. Sec. 5, Ch. 177, L. 1935.

5094.6. Clerk—records—seal. The city clerk of the city in which said court is located shall be ex-officio clerk of such court, and the records of such court shall be kept by such clerk; and such records in civil causes shall conform as nearly as possible to the records of district courts. Said courts shall have and use a seal, which seal shall be similar to the seal of the district court, except as to the name of the court. In criminal causes and in cases arising under city ordinances and section 5089, the records shall be similar to the records now kept in justice court.

History: En. Sec. 6, Ch. 177, L. 1935.

5094.7. Officers. The chief of police of the city shall be the executive officer of such court. He shall serve all process and execute all orders of the court, either in person or by subordinate police officer who shall execute process in his name. The chief of police, with the approval of the judge, shall appoint one or more policemen as court officers, one of whom shall attend the sessions of the court and perform all duties in connection therewith which the judge may require.

History: En. Sec. 7, Ch. 177, L. 1935.

5094.8. Sessions of the court. Such court shall be in continuous session from 10:00 o'clock A. M. to 4:00 o'clock P. M. on every judicial day or such other hours as the judge thereof may designate, except that, during the time when the district court of the county in which said municipal court

is located is in session, the municipal judge may in his discretion suspend court.

History: En. Sec. 8, Ch. 177, L. 1935.

5094.9. Actions—how commenced—pleadings. In all civil causes the provisions of sections 9105 to 9192, inclusive, are hereby adopted and made applicable to actions and pleadings in municipal court, except where said provisions are inapplicable and where it is otherwise provided herein.

History: En. Sec. 9, Ch. 177, L. 1935.

5094.10. Summons—time for answer. Summons in municipal court shall be signed by the clerk and shall conform as near as may be to the provisions of section 9107, except that the time for answering shall be ten days, instead of twenty.

History: En. Sec. 10, Ch. 177, L. 1935.

5094.11. Practice—reply. The provisions of sections 9652 to 9697, inclusive, and sections 9711 to 9724, inclusive, are hereby adopted and made applicable to practice and procedure in municipal court, except where the same are repugnant to the provisions of this act. The words "Municipal Court" being substituted for justice court, and "judge" for justice of the peace where the same appears in said chapters. Where the answer contains a counter-claim or any new matter, the plaintiff, if he does not demur, shall within five days after the service and filing of the answer, reply to such counter-claim or new matter in the manner and form provided for in section 9158.

History: En. Sec. 11, Ch. 177, L. 1935.

5094.12. Judgments. In civil causes judgments in municipal court shall be made and entered as in district court and shall be of like tenor and effect.

History: En. Sec. 12, Ch. 177, L. 1935.

5094.13. Disqualification of judges. The provisions of law applicable to disqualification of judges of district court shall apply to judges of municipal court. When a judge of municipal court has been disqualified or is sick or unable to act, he shall call in some practicing attorney-at-law of the county in which said court is located, who shall be judge pro tem with the same powers for the purposes of such cause as the judge of said court.

History: En. Sec. 13, Ch. 177, L. 1935.

5094.14. Costs. The same costs shall be allowed as are allowed in justice courts and shall be taxed and retaxed as in district court, twenty-four hours being allowed for filing memorandum of costs.

History: En. Sec. 14, Ch. 177, L. 1935.

5094.15. Jury trial. In civil causes and criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justice courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935.

5094.16. Police judge abolished. In cities in which a municipal court is established the office of police judge is hereby abolished.

History: En. Sec. 16, Ch. 177, L. 1935.

5094.17. Appeals. An appeal shall lie to the district court of the county in which the municipal court is established as from a judgment of justice court or police court, and the provisions of law applicable to such appeals shall apply and are hereby adopted. When the amount in controversy is less than one hundred (\$100.00) dollars there shall be no appeal, unless the municipal judge shall certify that a doubtful question of law is involved upon which a final decision is desirable.

History: En. Sec. 17, Ch. 177, L. 1935.

5094.18. Fees. The fees in municipal court shall be the same as the fees provided by law for justice court, and all fees collected by such court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935.

5094.19. General powers of judge. Except as otherwise provided by this chapter, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases, and the proceedings and practice therein shall be the same as in district court. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

History: En. Sec. 20, Ch. 177, L. 1935.

5094.20. Termination of office of police judge. The term of the police judge next elected or holding office in cities affected by this act shall terminate on the first Monday in May, 1937, and the office of police judge shall cease to exist in said city after such date.

History: En. Sec. 21, Ch. 177, L. 1935.

CHAPTER 390

POLICE DEPARTMENT

Section 5095.	Police department.
5096.	Mayor to have charge of police department.
5097.	Terms of members of police force.
5098.	Police commission required in first class cities—other cities and towns may provide for commission by ordinance.
5099.	Examination of applicants for position on police force.
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5101.	Active and eligible lists of policemen—filling vacancies—limitation of eligible list.
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- 5108.9. Salary deduction for payment of reserve officers.
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- 5108.14. Limit of use of fund.
- 5108.15. Days off duty without loss of compensation.
- 5108.16. Minimum wage of police in first class cities.
- 5108.17. Application of act.

5095. Police department. There shall be in every city and town of this state a police department, which shall be organized, managed, and controlled as in this act provided.

History: En. Sec. 1, Ch. 136, L. 1907; re-en. Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R. C. M. 1921.

Department Cannot be Abolished

The police force cannot be abolished as a whole, for under this section the city is required to maintain it; nor can it be abolished in part; the power of the city extends only to a reduction in its numbers for economical reasons, and it must be exercised in good faith. State ex rel. Quintin v. Edwards, 40 M 287, 306, 106 P 695.

Mandatory as to Cities of First Class

The metropolitan police law, placing the police department under civil service rules, is mandatory as to cities of the first class, but is left optional with the authorities of the smaller cities and towns whether they shall bring themselves within its provisions. State ex rel. Buckner v. Mayor of Butte, 41 M 377, 382, 109 P 710; Grush v. Bishop, 46 M 97, 101, 126 P 619.

Other Offices

The metropolitan police law contemplates that in addition to the office of chief of police, which the act itself creates, there shall be different grades and other offices established by the city council, as indicated in section 4863, or by the mayor in the event the council fails to act, as shown by section 5096. State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95.

5096. Mayor to have charge of police department. The mayor of all cities and towns shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this act, he shall have the power to suspend or remove any member or officer of the force. He shall make rules and regulations, not inconsistent with the provisions of this act, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: En. Sec. 2, Ch. 136, L. 1907; re-en. Sec. 3305, Rev. C. 1907; re-en. Sec. 5096, R. C. M. 1921.

How Construed as to Appointment and Removal

A chief of police whose duties are the same as those of the ordinary policeman,

Purpose

The purpose of the legislature in enacting the metropolitan police law was to remove the police force as far as possible from the control of partisan political influences by putting it under civil service rules, and thus raise the standard of efficiency. State ex rel. Quintin v. Edwards, 40 M 287, 303, 106 P 695; State ex rel. Bennetts v. Duncan, 47 M 447, 454, 133 P 109.

The legislature, in enacting the "Police commission bill," employing, as it did, many expressions which are exclusive in their meaning, intended to supplant all existing legislation as to the mode of constituting the police departments of cities, and to put all members thereof under civil service rules. State ex rel. Wynne v. Quinn, 40 M 472, 478, 107 P 506.

References

Cited or applied as chapter 136, p. 344, laws 1907, in State ex rel. Quintin v. Edwards, 38 M 250, 256, 99 P 940; as section 3304, revised codes, in State ex rel. Bailey v. Edwards, 40 M 313, 316, 106 P 703; State ex rel. Rowling v. District Court, 41 M 532, 533, 110 P 86; Wynne v. City of Butte, 45 M 417, 421, 123 P 531; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; State v. Dryburgh, 62 M 36, 46, 203 P 508; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943; Sullivan v. City of Butte, 65 M 495, 211 P 301.

except that the additional one of supervision and control of the entire force is imposed upon him, is a "policeman," and, as such, after appointment under the act placing the police departments of cities under civil service rules, he is secure from removal from office in any other manner

than that provided in the act. State ex rel. Wynne v. Quinn, 40 M 472, 476, 107 P 506.

Id. This section is wholly inconsistent with the notion that the mayor, or the council, or both together, may appoint or remove any member of the department in any other manner than that prescribed in the later law of which the section forms a part.

The power to reduce the police force, as constituted under the metropolitan police law, if unnecessarily large or for economical reasons, resides in the city council, and not in the mayor. State ex rel. Rowling v. Mayor of Butte, 43 M 331, 336, 117 P 604.

The metropolitan police law is quite similar, in its provisions relating to the appointment, suspension and discharge of the chief of police and of members of the police force, to the provisions of the firemen's act, as respects the chief and members of the city fire department. As to policemen, this court has held that the mode of their suspension or removal prescribed by the metropolitan police law obtains under the commission form of government as forcibly as under the aldermanic form. State ex rel. McDonald v. Getchell, 51 M 323, 152 P 480; State ex rel. Lease v. Wilkinson, 55 M 340, 177 P 401; State ex rel. Lease v. Wilkinson, 59 M 327, 196 P 878; State v. Dryburgh, 62 M 36, 46, 203 P 508.

Organization by Ordinance

A city ordinance, providing for the organization of the police department of the city, in conformity with the statute gov-

erning that matter, has, when duly passed, the force and effect of a statute. State ex rel. Dwyer v. Duncan, 49 M 54, 59, 140 P 95.

Review of Action by Mayor

If the mayor of a city puts members of the police department out of active service, but afterwards complies with an order of court to reinstate them, and, after they have served a short time, again retires them, he is not in contempt. State ex rel. Rowling v. District Court, 41 M 532, 534, 110 P 86.

Id. In proceedings, under writ of supervisory control, to review the action of the district court in holding that the mayor of a city, to whom a writ of mandate had been issued to restore certain policemen to their offices, from which they had been unlawfully ousted by him under the provisions of the metropolitan police law, the only question presented was whether said mayor had actually in good faith obeyed the order by restoring the officers to their places. Under these circumstances, the question whether the mayor could relieve the men from active duty and place them on the eligible list, and other kindred propositions not theretofore presented to the district court for adjudication, were not properly determinable.

References

Cited or applied as section 3305, revised codes, in State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943; State ex rel. O'Neill v. Mayor of Butte, 96 M 403, 404, 30 P 2d 819.

5097. Terms of members of police force. All appointments to the police force must be appointed by the mayor and confirmed by the city council, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor, and by him referred to the police commission, where such commission exists, and such applicant has successfully passed the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than six months. At any time before the end of such probationary term, the mayor may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council, and if such appointment is confirmed by the city council, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; re-en. Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R. C. M. 1921; amd. Sec. 2, Ch. 119, L. 1923.

Operation and Effect

A policeman, discharged contrary to the provisions of the metropolitan police law, is not guilty of laches in delaying, for

thirteen months, to take any action by mandamus for his reinstatement, where he is awaiting the final decision of law questions in a similar pending proceeding. State ex rel. Bennetts v. Duncan, 47 M 447, 452, 133 P 109.

Id. It is obligatory upon the mayor of a city to appoint to permanent service on the police force a policeman who, after service for the probationary term of six months, has demonstrated his fitness for the position.

References

Cited or applied as section 3306, revised

5098. Police commission required in first class cities—other cities and towns may provide for commission by ordinance. In cities of the first class the mayor shall nominate, and with the consent of the city council appoint three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years, and that one such member must be appointed annually, at the first regular meeting of the city council in May of each year. Provided, that at the first meeting of the council in the month of May after the passage of this act, the mayor, subject to the approval of the council, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council, not to exceed ten dollars per day, nor more than fifty dollars per month for any month for each member in cities of the first class.

The council of any town or city, other than a city of the first class, may provide by ordinance for such a police commission in any such city or town.

History: En. Sec. 4, Ch. 136, L. 1907; re-en. Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R. C. M. 1921; amd. Sec. 1, Ch. 119, L. 1923.

Operation and Effect

The law, in effect, commands that there shall be an examining and trial board of the police department, the members of which the mayor is required to nominate, and as to cities of the first class the law is mandatory, and, as to other cities and towns, it is permissive only. State ex rel. Buckner v. Mayor of Butte, 41 M 377, 383, 109 P 710.

Id. Where the mayor of a city of the

codes, in State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; Grush v. Bishop, 46 M 97, 100, 126 P 619; Larkin v. City of Butte, 52 M 410, 412, 158 P 316; State ex rel. Breen v. Mayor of City of Butte, 58 M 116, 118, 190 P 991; State ex rel. Mueller v. District Court, 87 M 108, 112, 285 P 928; State ex rel. Anderson v. Fousek, 91 M 448, 453 et seq., 8 P 2d 791; State ex rel. O'Neill v. Mayor of Butte, 96 M 403, 405, 30 P 2d 819.

first class had appointed three residents to constitute the examining and trial board of the police department created by this section, such persons, having qualified, were de facto officers whose official acts were legal, notwithstanding the city council repeatedly refused to confirm them.

References

Cited or applied as section 3307, revised codes, in State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; Grush v. Bishop, 46 M 97, 100, 126 P 619; State ex rel. Bennetts v. Duncan, 47 M 447, 454, 133 P 109.

5099. Examination of applicants for position on police force. All applicants for positions on the police force, whose application shall have been referred to the police commission, shall be required successfully to undergo an examination before the police commission, and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

It shall be the duty of the police commission to examine all such applicants as to their age, legal, mental, moral and physical qualifications, and

their ability to fill the office as a member of the police force, it shall also be the duty of the police commission subject to the approval of the mayor, to make such rules and regulations regarding such examinations not inconsistent with this act or the laws of the state.

Any applicant who shall make any false statement to the police commission as to his age or other qualifications required, at his examination before the police commission, shall be subject to suspension or dismissal from the police force, after trial.

History: En. Sec. 5, Ch. 136, L. 1907; re-en. Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R. C. M. 1921; amd. Sec. 3, Ch. 119, L. 1923.

Operation and Effect

The effect of this provision is that a decision of the examining and trial board on questions of fact is final and conclusive on all courts if there is any substantial evidence to support it. *Bailey v. Examining and Trial Board*, 42 M 216, 218, 122 P 69; *Id.*, 45 M 197, 202, 122 P 572.

Probationary Term

A police captain is a "policeman," and upon appointment, after having served the probationary term of six months is secure from removal from office except as provided by law. *State ex rel. Bailey v. Edwards*, 40 M 313, 318, 106 P 703.

A probationer, being a member of the police force, can be removed only upon charges made and trial had in conformity with this and the following section. *State ex rel. Bennetts v. Duncan*, 47 M 447, 455, 133 P 109.

References

Cited or applied as section 3308, revised codes, in *Grush v. Bishop*, 46 M 97, 100, 126 P 619, *Larkin v. City of Butte*, 52 M 410, 412, 153 P 316; *State ex rel. O'Brien v. Mayor of Butte*, 54 M 533, 535, 172 P 134; *State ex rel. Quintin v. Edwards*, 40 M 287, 304, 106 P 695; *State ex rel. Wynne v. Quinn*, 40 M 472, 480, 107 P 506; *Bailey v. Examining and Trial Board*, 42 M 216, 218, 112 P 69; *Bailey v. Examining and Trial Board*, 45 M 197, 203, 122 P 572; *State ex rel. Dwyer v. Duncan*, 49 M 54, 58, 140 P 95; *State ex rel. Breen v. Mayor of City of Butte*, 58 M 116, 118, 190 P 991; *State ex rel. Examining and Trial Board v. District Court*, 58 M 90, 100, 190 P 295; *State ex rel. Lease v. Wilkinson et al.*, 59 M 327, 335, 196 P 878; *State v. Dryburgh*, 62 M 36, 46, 203 P 508; *Sweeney v. City of Butte*, 64 M 230, 243, 208 P 943; *King v. Mayor of City of Butte*, 71 M 309, 310 et seq., 230 P 62; *State ex rel. O'Neill v. Mayor of Butte*, 96 M 403, 405, 30 P 2d 819.

5100. Presentation and trial of charges against policemen. The police commission shall have the jurisdiction, and it shall be its duty to hear, try and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer is incompetent, or by age or disease, or otherwise, has become incapacitated to discharge the duties of his office, or has been guilty of neglect of duty, or of misconduct in his office, or of conduct unbecoming a police officer or has been found guilty of any crime, or whose conduct has been such as to bring reproach upon the police force.

Any charge brought against any member of the police force must be in writing in the form required by the police commission and a copy thereof must be served upon the accused officer or member at least three days before the time fixed for the hearing of such charge.

It is the duty of the police commission at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try and determine the charge according to the rules of said police commission. The accused shall have the right to be present at the trial in person and by counsel, and to be heard, and to give and furnish evidence in his defense. All trials shall be open to the public.

The chairman, or acting chairman, of the police commission, shall have power to issue subpoenas, attested in its name, to compel the attendance of

witnesses at the hearing and any person duly served with a subpoena is bound to attend in obedience thereto, and the police commission shall have the same authority to enforce obedience to the subpoena, and to punish the disobedience thereof, as is possessed by a judge of the district court in like cases.

The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven, and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove or discharge any officer who shall have been found guilty of the charge filed against him.

Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing, giving reasons therefor, which shall become a permanent record of the police commission.

The findings and decisions of the police commission shall be final and conclusive unless modified or vetoed by the mayor, within five days from the date of the filing of such findings and decision with the city clerk.

When a charge against a member of the police force is found proven by the board, and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board, or if modified by the mayor, then such decision as modified, and such decision or order shall not be subject to review by any court on a question of fact.

The district court of the proper county shall have jurisdiction, however, in a suit brought by an officer or member of the police force, to determine whether the essential requirements of law as to the method of trial have been complied with, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of sixty days after the decision of the police commission or order of the mayor has been filed with the city clerk, and in no case shall any officer or member who has been suspended or discharged, or placed upon the eligible list, be entitled to any salary or other emoluments of office, during the period of suspension, or during the time he remains upon the eligible list, or from the date of his discharge by the police commission or the mayor, to the time of his re-instatement if the court should finally find he was entitled to be re-instated. No court shall have jurisdiction to hear or determine any question or controversy concerning the salary or compensation of any member of the police force now or hereafter accrued, except for services actually rendered.

In no case shall any officer or member of the police force, be discharged without a hearing or trial before the police commission, as herein provided, in all cities of the first class.

The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten days in any one month, without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two persons at one time for a period not to exceed thirty days to do police duty who are not members of the police department.

History: En. Sec. 6, Ch. 136, L. 1907; re-en. Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923.

Charge to be in Writing

The requirement of this section, that a complaint charging a police officer with any of the offenses triable by the examining and trial board of the police department shall be reduced to writing, is met if it in substance makes out any of the offenses mentioned therein. *Bailey v. Examining and Trial Board*, 45 M 197, 199, 122 P 572.

Trial

It is contemplated that charges against any officer in the department shall be heard by the examining and trial board. *State ex rel. Dwyer v. Duncan*, 49 M 54, 188, 140 P 95.

Under the metropolitan police law there is no inherent right of indefinite tenure in the office of policeman, but, when remiss in their duty, the members of the police force are subject to discipline or removal from office after trial before the police commission which has quasi-judicial powers not limited by the provisions of the constitution applicable to courts. *State ex rel. Mueller v. District Court*, 87 M 108, 112 et seq., 285 P 928.

Id. In the absence of statutory provision for the disqualification of members of the police commission on the ground of bias or prejudice, vested, as it is, with exclusive jurisdiction to hear and determine charges against members of the police force, the right of a member of the commission to participate in a hearing of charges against a policeman is not vulnerable to such attack, the rule of disqualification not applying to officers not judicial.

Id. The writ of prohibition lies only to arrest proceedings without or in excess of jurisdiction—the power to hear and determine the case; therefore where the affidavit for the writ does not present a jurisdictional question, as where a policeman under charges for misconduct seeks to disqualify a member of the police board from participating in the hearing for bias and prejudice but the statute does not provide for such disqualification, leaving the question of jurisdiction unaffected, the writ does not lie.

Id. Where the chairman of a police commission, though restrained from officially participating in the trial of a policeman for misconduct in office by writ of prohibition, improperly issued, nevertheless was present at the trial throughout though not acting as chairman, his right to join his colleagues in the final disposition of the case, after dismissal of the prohibition proceeding, was not affected by the issuance of the writ.

What is Sufficient Misconduct

A police officer who, after having been notified of an obstruction on a sidewalk by a pedestrian who was injured by falling over it, paid no attention to the complaint further than to say that nothing could be done unless the complainant should swear out a warrant against the owner of the premises, was guilty of misconduct in office, in view of police regulations governing such matters, as well as of neglect of duty; and a charge substantially embodying these facts was sufficient to state either or both of these offenses made triable by the trial board of the police department. *Bailey v. Examining and Trial Board*, 45 M 197, 202, 122 P 572.

In every proceeding for the removal of an officer the charges against him are not to be tested by the rigid rules of criminal procedure, but the ultimate inquiry is the fitness of the accused to hold his position, and such inquiry is raised by the specific questions whether he is incompetent or has been guilty of neglect of duty or misconduct in office, or conduct unbecoming an officer. *State ex rel. O'Brien v. Mayor of Butte*, 54 M 533, 536, 172 P 134.

Id. The sufficiency of charges against a police officer cannot be defeated by the fact that the specifications considered as a basis for criminal prosecution may be barred by the statute of limitations.

References

Cited or applied as section 3309, revised codes, in *State ex rel. Wynne v. Quinn*, 40 M 472, 477, 107 P 506; *State ex rel. Bennetts v. Duncan*, 47 M 447, 455, 133 P 109; *State ex rel. Dwyer v. Duncan*, 49 M 54, 58, 140 P 95; *Larkin v. City of Butte*, 52 M 410, 412, 158 P 316; *State ex rel. Lease v. Wilkinson et al.*, 59 M 327, 334 et seq., 196 P 878; *State v. Dryburgh*, 62 M 36, 46, 203 P 508; *Sweeney v. City of Butte*, 64 M 230, 243, 208 P 943.

5101. Active and eligible lists of policemen—filling vacancies—limitation of eligible list. The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, and to divide the police membership into two lists, one an active list, who are to be actually employed and receive pay while so employed; and one an eligible list, who shall not receive pay, while not actually employed as an officer, or member, and to

reduce the number of the police force at any time. That such officers or members of the active list, temporarily relieved, from duty, shall become members of the eligible list without pay and shall be first entitled to re-instatement on the active list, in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy, in the order of their appointment. Such action of the council shall not be subject to review by any court.

In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number twenty per cent of the active list.

History: En. Sec. 7, Ch. 136, L. 1907; re-en. Sec. 3310, Rev. C. 1907; re-en. Sec. 5101, R. C. M. 1921; amd. Sec. 5, Ch. 119, L. 1923.

Operation and Effect

The act of the mayor and city council in retiring a lieutenant of police to the eligible list, on the ground of economy, and immediately thereafter appointing another to fill the same office, was a violation of the civil service principle upon which the metropolitan police law is

founded and did not deprive the plaintiff of his office. State ex rel. Dwyer v. Duncan, 49 M 54, 59, 140 P 95.

References

Cited or applied as section 3310, revised codes, in State ex rel. Wynne v. Quinn, 40 M 472, 477, 478, 107 P 506; as section 7 of metropolitan police law, in State ex rel. Bennetts v. Duncan, 47 M 447, 455, 133 P 109; Sweeney v. City of Butte, 64 M 230, 243, 208 P 943.

5102. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty, or to arrest on civil process, while actually on duty, nor shall he hold any other office, or be employed in any other department of the city or town government.

History: En. Sec. 8, Ch. 136, L. 1907; re-en. Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R. C. M. 1921.

References

Cited or applied as section 3311, revised codes, in State ex rel. Wynne v. Quinn, 40 M 472, 477, 478, 107 P 506.

5103. Members of the police department not to take part in political conventions. No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention, except in the performance of duty relating to his position as such officer or member.

History: En. Sec. 9, Ch. 136, L. 1907; re-en. Sec. 3312, Rev. C. 1907; re-en. Sec. 5103, R. C. M. 1921.

References

Cited or applied as section 3312, revised codes, in State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506; State ex rel. Bennetts v. Duncan, 47 M 447, 450, 133 P 109.

5104. Prohibited from soliciting for votes. It shall be unlawful for any officer or member of the police department to solicit any person to vote at any political caucus, primary, or election for any candidate, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or at any election, or be a member of any political committee.

History: En. Sec. 10, Ch. 136, L. 1907; re-en. Sec. 3313, Rev. C. 1907; re-en. Sec. 5104, R. C. M. 1921.

References

Cited or applied as section 3313, revised codes, in State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506.

5105. City council may make additional regulations. In addition to the provisions herein contained, the city or town council may make any

ordinances, not inconsistent with this act, or any law of the state, for the government of the police department, and for regulating the powers and duties of its officers and members.

History: En. Sec. 11, Ch. 136, L. 1907; re-en. Sec. 3314, Rev. C. 1907; re-en. Sec. 5105, R. C. M. 1921.

Operation and Effect

The city council may furnish assistance to the mayor, in the form of a commission, to determine the physical competency of

the members of the police force. Larkin v. City of Butte, 52 M 410, 413, 158 P 316.

References

Cited or applied as section 3314, revised codes, in State ex rel. Quintin v. Edwards, 40 M 287, 302, 106 P 695; State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95.

5106. Qualifications of policemen. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, but this restriction shall not apply to any member of any present police department, provided however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, and have been a resident of the city or town in which he is appointed at least two years prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

History: En. Sec. 12, Ch. 136, L. 1907; re-en. Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923.

References

Cited or applied as section 3315, revised codes, in State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506.

5107. Salary of chief of police. The salary of the chief of police in cities of the first-class shall be not less than one hundred nor more than three hundred dollars per month, and within these limits the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; re-en. Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921.

References

Cited or applied as section 3316, revised codes, in State ex rel. Wynne v. Quinn, 40 M 472, 477, 107 P 506.

5108. Repealing clause. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing herein contained shall abridge any of the powers possessed by the mayor of any city or town under any other provisions of law or any ordinance.

History: En. Sec. 14, Ch. 136, L. 1907; re-en. Sec. 3317, Rev. C. 1907; re-en. Sec. 5108, R. C. M. 1921.

Operation and Effect

The saving clause of this section serves no purpose other than to indicate that the legislature did not intend to repeal any

existing law or ordinance of any city which was not inconsistent with the law enacted. State ex rel. Wynne v. Quinn, 40 M 472, 480, 107 P 506.

References

Cited or applied as section 14, police commission bill, in State ex rel. Quintin v.

Edwards, 38 M 250, 270, 99 P 940; as section 3317, revised codes, in State ex rel. Quintin v. Edwards, 40 M 287, 297, 106 P 695; State ex rel. Bailey v. Edwards, 40 M 313, 316, 106 P 703; State ex rel. Buckner v. Mayor of Butte, 41 M 377, 380, 109 P 710; State ex rel. Rowling v. District

Court, 41 M 532, 533, 110 P 86; State ex rel. Rowling v. Mayor of Butte, 43 M 331, 117 P 604; Grush v. Bishop, 46 M 97, 98, 126 P 619; State ex rel. Dwyer v. Duncan, 49 M 54, 58, 140 P 95; Larkin v. City of Butte, 52 M 410, 412, 153 P 316.

5108.1. Age restriction on policemen—not applicable to veterans, present members and police reserves. The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than twenty-one (21) years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for nor to honorably discharged soldiers, sailors, and marines of the United States who were in either the Spanish-American war, the Philippine insurrection, or the late war with Germany and her allies.

History: En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929.

5108.2. Police reserves—qualification of members. Whenever any member of the police department in cities of the first and second class at the time of the taking effect of this act or thereafter shall have served for twenty-five (25) years or more in the aggregate as a member of such police department in any capacity or rank whatever; provided, a police officer serving in the United States army or navy, in time of war or national emergency shall be given credit upon his police record for such service in the same manner as though on active police duty for such time or shall have, while in active service reached the age of sixty-five (65) years, he may with the consent of the city council, pass from the active list of police officers of such city or town and become a member of the police reserves of such city or town.

History: En. Sec. 2, Ch. 100, L. 1927; amd. Sec. 2, Ch. 120, L. 1929.

5108.3. Police reserves may be called into active service, when. Policemen or officers on the reserve list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules and regulations as the board of police commissioners or city council shall prescribe.

History: En. Sec. 3, Ch. 100, L. 1927; amd. Sec. 3, Ch. 120, L. 1929.

5108.4. Policeman incapacitated in discharge of duties becomes member of police reserves, when. Whenever any policeman or officer shall receive injuries or disabilities while on duty, or in active discharge of the duties of a police officer, and in line of duty, which injuries or disability shall, in the opinion of the board of police commissioners or city council of the city or town, to be of such character to impair his ability as an active police officer, or incapacitate him for the further discharge of his duties, as such, he shall become a member of the police reserves of such city or town in like manner as though he had arrived at the age of transfer to the reserve list of such department.

History: En. Sec. 4, Ch. 100, L. 1927; amd. Sec. 4, Ch. 120, L. 1929.

5108.5. Payment of police reserves. Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half ($\frac{1}{2}$) the salary he was receiving during the year prior to the time he passed to the police reserve list.

History: En. Sec. 5, Ch. 100, L. 1927; amd. Sec. 5, Ch. 120, L. 1929.

5108.6. Compensation and allowance of sick or injured policemen. Whenever any member of a police department in any city or town, shall on account of sickness or disability, suffered or sustained while a member of such police department, and not caused or brought on by dissipation or abuse, be confined to any hospital or his home, and shall require medical attention and care, the officer of such police department may be, by the city council, allowed his salary as such police officer, during his absence, and an amount equal to his expenses while confined for such injury or sickness.

History: En. Sec. 6, Ch. 100, L. 1927; amd. Sec. 6, Ch. 120, L. 1929.

5108.7. Tax levy for payment of police reserves. For the purpose of paying the salaries of policemen who have been placed upon the reserve list, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one-half ($\frac{1}{2}$) of one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of salaries of police officers upon the reserve list.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929.

5108.8. Cities under second class may come within provisions of act by passing ordinance and making levy. Cities other than those in the first and second class may come within the provisions of this act by duly passing an ordinance of their desire to come within the provisions of the act and making the tax levy herein provided for.

History: En. Sec. 8, Ch. 100, L. 1927; amd. Sec. 8, Ch. 120, L. 1929.

5108.9. Salary deduction for payment of reserve officers. The treasurer of any incorporated city which may be hereafter subject to the provisions of this act, shall retain from the monthly salary of all police officers upon the active list, a sum equal to one and one-half per centum ($1\frac{1}{2}\%$) of the monthly compensation paid each officer for his services as such police officer, the said monthly deduction from the salaries of such police officers, shall be paid into the fund created by the tax levy for the purpose of paying the salaries of police officers upon the reserve list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929.

5108.10. Gifts and moneys to be applied to fund. All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments, paid or given on account of any extraordinary service of any member of such police

department, except when specifically allowed to be retained by such officer by the mayor, commissioners and chief of police, and all moneys derived from the provisions of this act, shall be placed in the fund created by the tax levy of taxable property and per centum of salaries withheld from such police officers.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929.

5108.11. Investment of fund. All moneys in said fund in excess of such an amount as shall be deemed necessary from time to time to meet current payments to reserve police officers, shall be invested as hereinafter provided, and all interest on any and all moneys belonging to said fund from whatever source derived shall belong to and be paid into said fund.

History: En. Sec. 11, Ch. 120, L. 1929.

5108.12. Trustees of fund—appointment—terms. A board of trustees of said fund shall be created in each city or town, having such fund, to consist of the mayor, clerk and attorney of said city or town, and two (2) members of the police department from the active list of the police officers of said city or town, who shall be selected by a majority vote of the members of the police department on the active list of said city or town, the two first selected after the passage of this act shall be so selected that one shall be selected for a term of two (2) years and the other for a term of one (1) year. That said first selection shall be made between the first and tenth day of May, of the year 1929, and annually thereafter between the first and tenth day of May, one member shall be selected for the term of two (2) years. A certificate of the election of the members or member of the police department selected for said board of trustees shall be immediately upon such selection being made, certified to the city clerk of the city or town, by the chairman and secretary of the meeting at which selection was made.

History: En. Sec. 12, Ch. 120, L. 1929.

5108.13. Trustees duties—auditing of fund—investment—report on retirement of policemen. The board of trustees of said fund, shall audit the same from time to time at least twice during each year, and report the condition of said fund annually to the city or town council on or before the first day of April of each year. And the said board of trustees, shall invest the money in said fund from time to time as may be directed by the city or town council. But the money of said fund shall not be invested in any other than bonds of the United States or of the state of Montana, or bonds or warrants of the city or town, in which said fund exists, which are general liabilities of the whole city or town. And said trustees shall make sale of such bonds or securities when desirable and as directed by the city or town council. All such bonds and warrants shall be deemed part of the said fund and shall be kept in the possession of the city or town treasurer, and the treasurer shall be responsible therefor in the same manner as he is for all other moneys or funds of the city or town. Before any member of the police department is placed on the reserve list by the city council, the said board of trustees of said fund shall report to the city council in writing their recommendations as to whether or not such member shall be placed upon said reserve list.

History: En. Sec. 13, Ch. 120, L. 1929.

5108.14. Limit of use of fund. Said fund shall not be used for any purpose whatsoever, other than the payment to members of the police department on the reserve list of the amounts to which they are entitled under the provisions of this act.

History: En. Sec. 14, Ch. 120, L. 1929.

5108.15. Days off duty without loss of compensation. That each member of the police force in every city of the first and second class shall be given one (1) day off duty in each eight (8) day period without loss of compensation.

History: En. Sec. 1, Ch. 53, L. 1931.

5108.16. Minimum wage of police in first class cities. That from and after the passage and approval of this act there shall be paid to each member of the police department of cities of the first class of the state of Montana, a minimum wage, for a daily service of eight consecutive hours' work, of at least one hundred sixty (\$160.00) dollars per month for the first year of service, and thereafter of at least one hundred sixty (\$160.00) dollars per month plus one (\$1.00) dollar per month for each additional year of service up to and including the tenth year of such additional service; provided, however, that members of the police department of said cities of the first class, and of those cities and towns that have heretofore elected to come under the provisions of sections 5108.1 to 5108.14, inclusive, at the time of the passage and approval of this act, shall thereafter be paid a monthly minimum wage of at least one hundred sixty (\$160.00) dollars, plus one (\$1.00) dollar per month for each year of active service after the first year, theretofore rendered by them, not exceeding ten (10) years of such service, after the first year.

History: En. Sec. 1, Ch. 55, L. 1935.

5108.17. Application of act. That this act shall apply to and include all cities and towns not of the first class, which have heretofore elected, or may hereafter elect to come under the provisions of sections 5108.1 to 5108.14, inclusive.

History: En. Sec. 2, Ch. 55, L. 1935.

CHAPTER 391

FIRE DEPARTMENT—FIREMAN'S DISABILITY FUND

Section	5109.	Council may establish fire department.
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- 5131. Duties of association and city treasurers.
- 5132. Pensions to retired firemen.
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- 5134. Pension to widows and orphans.
- 5135. Use of disability and pension fund of fire department relief association.
- 5136. Pensions exempt from legal process and non-assignable.
- 5137. Source and control of funds.
- 5138. Hours of work for members of fire departments in first and second class cities.
- 5139. Rules and regulations governing fire departments.
- 5140. Appointment of chief engineer of fire department—his powers and duties.

5109. Council may establish fire department. The council of cities and towns shall have power to establish a fire department, and prescribe and regulate its duties, to maintain a fire-alarm telegraph, to erect engine, hose, and hook-and-ladder houses, and provide engines and other implements and apparatus for the extinguishing of fire.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R. C. M. 1921.

der civil service rules. State ex rel. Drifill v. City of Anaconda, 41 M 577, 581, 111 P 345.

Operation and Effect

Mandamus lies to reinstate a fireman who has been discharged in violation of the act placing paid fire departments un-

References

State v. Dryburgh, 62 M 36, 43, 203 P 508; State ex rel. Barry v. O'Leary et al., 83 M 445, 447.

5110. Fire department to consist of what—compensation. Such fire department, when established, may consist of one chief of the fire department, as many assistant chiefs of the first department, and such number of firemen as the council may from time to time provide, and may also include a city electrician, and as many assistant electricians as the council may from time to time provide. The compensation of the chief of the fire department and assistant chiefs of the fire department and firemen, in cities and towns where the council shall establish a paid fire department, and said city electrician and assistant city electricians, shall be fixed by ordinance. The mayor shall nominate, and, with the consent of the council, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firemen, and such appointment shall be first made for a probationary term of six months, and thereafter the mayor may nominate, and, with the consent of the council, appoint such chief and assistant chief or chiefs of the fire department and firemen, who shall thereafter hold their appointment during good behavior, and while they have the physical ability to perform their duties. The chief of the fire department, and the assistant chief or chiefs of the fire department, and the firemen, shall not be deemed officers of the municipal corporation in which such fire department is established.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R. C. M. 1921.

Operation and Effect

Section 4999 has no application to a fireman, since this section declares that he is not to be deemed a municipal officer. State ex rel. Drifill v. City of Anaconda, 41 M 577, 581, 111 P 345.

5111. Powers of mayor to suspend firemen. The mayor may suspend the chief and assistant or any fireman of the fire department for neglect of duty or a violation of any of the rules and regulations of the fire department; the chief of the fire department may suspend the assistant chief of the fire department or any fireman, and the assistant chief of the fire department may suspend any fireman for a like cause. In all cases of suspension the person suspended must be furnished with a copy of the charge against him in writing, setting forth reasons for the suspension, and such charges must be presented to the next meeting of the council and a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges; if such charges are found proven by the council, the council, by a vote of a majority of the whole council, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a time limited, or in the removal of the suspended person from the fire department; should the charges be not presented to the next meeting of the council after the suspension, or should the charges be found not proven by the council, the suspended person shall be reinstated and be entitled to his usual compensation for the time so suspended.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R. C. M. 1921.

Operation and Effect

If a fireman has been removed without written charges his action in asking for reinstatement after his discharge did not constitute a waiver of his right to be con-

fronted with written charges, as there can be no waiver of a right that has been lost. State ex rel. Driffill v. City of Anaconda, 41 M 577, 582, 111 P 345.

References

Cited or applied as section 3328, revised codes, in State ex rel. Griffiths v. Mayor of City of Butte, 57 M 368, 188 P 367.

5112. Reduction of force in reverse order of appointment. Should the council at any time reduce the number of firemen in the fire department, those most recently appointed shall be selected for retirement from the fire department, and the city or town clerk shall keep a list of such retired firemen, and should the number of firemen be again increased by the council, the men on said list shall be called into service, the longest service firemen being first selected for service in the fire department.

History: En. Sec. 4, p. 74, L. 1899; re-en. Sec. 3329, Rev. C. 1907; re-en. Sec. 5112, R. C. M. 1921.

Operation and Effect

The city council must, if it deems it necessary to reduce the number of paid

firemen, retire the one last appointed, and may not exercise any discretion in the premises and discharge the one thought least efficient even though oldest in point of service. State ex rel. Driffill v. City of Anaconda, 41 M 577, 584, 111 P 345.

5113. Qualifications of firemen. The qualifications of firemen shall be that they shall be qualified voters of the city or town, not over forty-five years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty. Should there be any firemen in the existing fire department of cities and towns, whose age at the time of their appointment is forty-five years or over, the same shall be retired from the service of such department.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921.

Operation and Effect

Where a discharged fireman seeks reinstatement by mandamus, a statement in his affidavit that he had been duly appointed and confirmed as a member of

the fire department, and that at all times he had the physical ability to perform his duties as such, was a sufficient allegation that he possessed the qualifications of a fireman as defined by this section; otherwise he would not have been appointed in the first instance. State ex rel. Driffill v. City of Anaconda, 41 M 577, 581, 111 P 345.

5114. Duties of chief and assistant chief of fire department. The chief of the fire department shall have sole command and control over all persons connected with the fire department of the city or town, and shall possess full power and authority over its organization, government, and discipline, and to that end may from time to time establish such disciplinary rules and regulations as he may deem advisable, subject to the approval of the city or town council; he shall have charge of and be responsible for the engines and other apparatus, the property of the town or city furnished the fire department, and see that they are at all times ready for use in the extinguishing of fires. The assistant chief of the fire department shall aid the chief in the work of the department and in his absence shall perform his duties.

History: En. Sec. 6, p. 75, L. 1899; re-en. Sec. 3331, Rev. C. 1907; re-en. Sec. 5114, R. C. M. 1921.

Operation and Effect

While in cities of the first class operating under the commission form of government authorized by chapter 57, laws of 1911, the members of the fire department are protected in their tenure by the provisions of the firemen's act (Rev. C. 1907, sec. 3328), the chief of the department may be removed at any time by a majority vote of the council. State v. Dryburgh, 62 M 36, 203 P 508.

Id. The chief of the fire department of a city operating under the commission form of government was removed by the

council, his name, however, being restored to the roll of members, thus entitling him to the safeguards afforded him as such member under the civil service rules of the firemen's act. He later was suspended under subdivision (c) of section 25, chapter 57, laws of 1911, but a hearing on his appeal was not accorded him. Held, that failure to hear his appeal rendered the order of suspension of no effect, automatically reinstated him and entitled him to compensation during the period of his suspension.

References

Cited or applied as section 3331, revised codes, in State ex rel. Griffiths v. Mayor of City of Butte, 57 M 368, 188 P 367.

5115. Act applicable to existing departments. In cities and towns where fire departments are now established, organized, and existing, as provided in this act the same shall be deemed to be established hereunder.

History: En. Sec. 7, p. 75, L. 1899; re-en. Sec. 3332, Rev. C. 1907; re-en. Sec. 5115, R. C. M. 1921.

5116. Volunteer companies not affected. All acts and parts of acts in conflict herewith are hereby repealed; provided, that nothing herein contained shall be held or construed to affect any fire organization known as a volunteer fire company.

History: En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907; re-en. Sec. 5116, R. C. M. 1921.

5116.1. Levy of tax for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department, and for the purpose of purchasing the necessary equipment therefor, the council in any city or town, may assess and levy, in addition to other levies permitted by law, a special tax not exceeding two (2) mills on each dollar of the assessed valuation of the

taxable property of the city or town; and, provided, further, that the words "assessed valuation" as used in this section shall be the percentage of the true and full valuation of the taxable property provided in section 2000 and shall not be deemed to be the true and full valuation of such property.

History: En. Sec. 1, Ch. 26, L. 1927.

5117. Disability and pension fund. There shall be created and established in each incorporated city or town of the state of Montana where there is an organized fire department, recognized by city council, which said fire department has or shall hereafter form themselves into an association known as the fire department relief association of the city or town of (name of the city or town) and incorporated under the laws of the state of Montana, a fund to be known as "disability and pension fund" of the fire department relief association of the city or town of (naming the city or town) said fund to be held by the treasurer of such association, as provided by law, and to be kept in a separate fund. No fire department relief association shall be organized and incorporated under the provisions of this act, unless it is in an incorporated city or town of this state, and has a duly organized fire department, consisting of either paid, part-paid, or volunteer firemen, or any or all such firemen, which said fire department must have fire fighting equipment in serviceable condition, of the value of seven hundred fifty dollars (\$750.00), or more, provided that the words "incorporated city or town" appearing in this act shall include any county seats whether incorporated or not.

History: En. Sec. 1, Ch. 71 L. 1907; re-en. Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1927.

5118. Source of fund. The disability and pension fund of the fire department relief association of such city or town shall consist of such sums of money as may be derived from the levy of an annual tax for that purpose, levied by such city or town council as provided for by section 5119, and donations to the said association from any source, in land, money, or other valuable gifts, and from money received from the state of Montana as provided by law. Any member of such relief association who shall receive any gift of money for his services other than the salary fixed by ordinance shall turn the same over to the credit of the said disability and pension fund.

History: En. Sec. 2, Ch. 71, L. 1907; re-en. Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R. C. M. 1921; amd. Sec. 2, Ch. 58, L. 1927.

5119. Tax levy for fund. For the purpose of maintaining said disability and pension fund of such fire department relief association, in an amount equal to three-fourths ($\frac{3}{4}$) of one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the city or town council or the commission or other proper authority of any municipality that is now or may hereafter be established under special or local law passed by the legislative assembly and adopted by the electors entitled to vote thereon, must annually at all times when the said relief association fund contains an amount less than three-fourths ($\frac{3}{4}$) of one per centum (1%) of the taxable valuation of all taxable property

within the limits of the city, town or municipality, in the manner provided by law, and at the time of the levy of the annual tax, levy a special tax of not less than one-tenth ($1/10$) of one (1) mill nor more than two-tenths ($2/10$) of one (1) mill on the dollar upon the taxable valuation of all taxable property assessed for taxes within the limits of said city, town or municipality, which said taxes shall be collected as other taxes and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; re-en. Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931.

5120. Board of trustees. A board of trustees of such fire department relief association shall be created to consist of seven (7) members, to-wit, the president of the fire department relief association, and the chief of the fire department, if an active member of the association, shall be ex-officio members thereof, and five members to be elected by the members of such association at the annual election of each year, to be held on or before the fifteenth day of April of each year.

History: En. Sec. 4, Ch. 71, L. 1907; re-en. Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R. C. M. 1921; amd. Sec. 4, Ch. 58, L. 1927.

5121. Duties of trustees. The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in bold-face type, substantially as follows: "Property of the..... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

History: En. Sec. 5, Ch. 71, L. 1907; re-en. Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1 Ch. 30, L. 1933.

5122. Repealed—Chapter 58, laws of 1927.

5123. Benefits, allowed for, how allowed, and how paid. Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

1. A service pension to a member who, by reason of service, has become entitled to a service pension.
2. To a member who has become maimed or disabled for life in line of duty.
3. To a member who has suffered injury in line of duty.
4. To a member who has contracted sickness in line of duty.
5. Funeral expenses of a member.
6. Pensions to the widow, orphan or orphans of a deceased member.

All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event his claim be disallowed. All claims shall be paid by warrant, duly authorized, drawn by the secretary, and countersigned by the president of the association, and on presentation thereof, the treasurer of the association shall pay the same out of the said pension and disability fund.

History: En. Sec. 7, Ch. 71, L. 1907; re-en. Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R. C. M. 1921; amd. Sec. 6, Ch. 58, L. 1927.

Operation and Effect

Held, that under this section, a city fireman may properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness

in an amount equal to his monthly salary during the time of such incapacity, and that in such case the provisions of sections 5132 and 5133, providing for a service pension and limiting it to one-half the monthly salary last received by such member have no application. State ex rel. Barry v. O'Leary et al., 83 M 445, 449, 450, 272 P 677.

5124. Embezzlement of funds. Any person who shall embezzle any of the money or other valuable thing belonging to the disability and pension fund of any fire department relief association, or who shall take part, in, or in any manner aid in any scheme or plan whereby said fund or association shall be defrauded out of any of the money in said fund, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than one year or more than ten years.

History: En. Sec. 8, Ch. 71, L. 1907; re-en. Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R. C. M. 1921; amd. Sec. 7, Ch. 58, L. 1927.

5125. Annual report of clerks of cities having fire department. On or before October 31st, annually, the clerk of every city having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R. C. M. 1921.

5126. Reports of insurance companies. The commissioner of insurance shall include in the blank form furnished to each fire insurance company for its annual statement, a list of all such incorporated cities or towns, and each company shall report therein the amount of premium received by it during the preceding year in each incorporated city or town. Before July 1st following said October 31st, mentioned in preceding section, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire department relief association which has complied with provisions of section 5117, which has been so reported to him and the amount of premiums received in each such city or town in such year by each fire insurance company.

History: En. Sec. 2, Ch. 129, L. 1911; re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927.

5127. State auditor to pay fire department relief associations license fee collected from licensed fire insurance companies. At the end of the

fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing in every such city or town and entitled by law to receive the same, his warrant for an amount equal to the license fees collected by the state auditor, as ex-officio insurance commissioner, from fire insurance companies, as provided by section 6112, as said cities or towns are each severally entitled to, computed as follows:

1. Each and every fire department relief association legally organized and existing in any city or town and entitled by law to receive the same shall receive, as its portion of the total license fees collected from fire insurance companies licensed in the state of Montana, all of the license fees assessed and collected on all premiums collected by fire insurance companies in the said city or town, pursuant to section 6112.

2. The legally organized and existing fire department relief associations in all cities or towns where the license fee collected and distributed pursuant to the preceding section is insufficient to make an amount equal to \$100.00 shall receive such an additional amount from the total license fees collected from fire insurance companies in the state of Montana as may be necessary to make the total amount received by said fire department relief association equal to a sum of \$100.00.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935.

NOTE.—See in connection with this section, section 5158.11.

References

Cited or applied as chapter 49, laws of 1915, in *Equitable Life Assur. Co. v. Hart*, 55 M 76, 86, 173 P 1062.

5127.1. Disability and pension fund. The state auditor shall pay an amount equal to the face value of the warrants so issued into the state treasury, to the credit of a special fund, which fund shall be known as the "Disability and Pension Fund" of the fire department relief association, and for that purpose, there is hereby created a fund to be known as the "Disability and Pension Fund" of the fire department relief association, and the state treasurer is hereby directed and authorized to keep account of said fund and pay all warrants drawn by the state auditor, pursuant to this act, out of the said fund hereby established.

History: En. Sec. 2, Ch. 15, L. 1935.

5128. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of said warrant of the state auditor, to pay to the treasurer of any such city or town, out of the fund known as the disability and pension fund of the fire department relief association as by law designated, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R. C. M. 1921; amd. Sec. 10, Ch. 58, L. 1927.

5129. Fire department relief association. The confirmed members of the fire department or departments, together with the volunteer fire department or departments recognized by the city or town council in each

incorporated city or town of this state are hereby authorized to form themselves into a local association, to be known as the fire department relief association of the city or town of..... (naming the city or town), and when so formed, it shall incorporate under the laws of this state. In the event of the formation of such fire department relief association, there shall be elected by a majority vote of the members thereof, the following officers, to-wit: A president, a secretary, a treasurer, and three members to serve as members of the board of trustees, which said board of trustees shall consist of five members, of which the chief of the fire department, and the president of the fire department relief association shall be ex-officio members thereof. After the incorporation of any such fire department relief association, the said elective officers shall be elected annually on or before the fifteenth day of April of each year.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R. C. M. 1921; amd. Sec. 11, Ch. 58, L. 1927.

5130. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts. The secretary and treasurer of every fire department relief association so formed shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes the money has been paid and expended, and file it with the association, and a duplicate with the state auditor. No money shall be paid to the treasurer of such fire department relief association until such report is so filed. No one serving as a substitute or on probation, nor any person who has not been confirmed a member of an organized fire department is eligible for membership in the relief association. No treasurer of any such association shall enter upon his duties until he has given to the association a good and sufficient bond of not less than fifty per cent (50%) of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law, the amount of such bond to be approved and paid for by such association. Provided, however, that in no case shall such official bond be in excess of the amount of twenty-five thousand dollars (\$25,000.00). Provided further, that upon a majority vote of the members of the association, the city or town treasurer shall be ex-officio treasurer of the fire department relief association and the official bond of such city or town treasurer shall cover the faithful discharge of his duties as ex-officio treasurer of the fire department relief association, and the cash in the firemen's relief fund shall have the same protection as to depository securities furnished by banks, as the other funds of the city or town. All of the financial books and accounts of such association with reference thereto shall be subject at all times to examination by the state examiner. The state examiner is hereby authorized, empowered and required to make such examination at least once each year, for which service the association shall pay to the state treasurer on or before the first day of July of each year, in all cases where the fund is in excess of one thousand dollars (\$1,000), a fee in the amount of ten dollars (\$10.00), which shall be credited to the state general fund. Upon complaint being duly made to him that the money or any part thereof paid under the provisions of this act to the treasurer of such association

has been or is being expended for any unauthorized purpose, and if such money upon examination is found to have been expended contrary to the authority given, he shall so report to the governor, upon whose directions to the state auditor, no further warrants shall be issued to such fire department relief association treasurer until the money so expended has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R. C. M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933.

5131. Duties of association and city treasurers. Whenever such fire department relief association is formed as provided by law and when the treasurer of such association has furnished the bond as provided by law, such city treasurer shall pay, to said fire department relief association treasurer all money in the hands of the city treasurer to the credit of said disability and pension fund taking the receipt of said treasurer and said city treasurer shall thereafter from time to time, as moneys are received by him for the credit of said fund or association turn the same over to the treasurer of said relief association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R. C. M. 1921; re-en. Sec. 13, Ch. 58, L. 1927.

5132. Pensions to retired firemen. Every fire department relief association whenever certificate of incorporation or its by-laws so provide may pay out of any money in the disability and pension fund a service pension in an amount not to exceed one-half of the monthly salary last received by such pensioner as may be provided for, to each of its members who has heretofore retired, or may hereafter retire, and has reached or shall hereafter reach the age of fifty (50) years, and who has done active duty for twenty (20) years or more as a member of a volunteer, paid or partly paid and partly volunteer fire department in the municipality where such association exists. Such pension may be decreased or increased within the amount specified, whenever the amount of funds on hand or the lack of funds render such action advisable or necessary. No such pension shall be paid to any person while he remains a member of the fire department and any person receiving such pension shall not be entitled to other relief from such association. In case of volunteer or call men the compensation shall not exceed the sum of seventy five dollars (\$75.00) per month.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927.

Operation and Effect

Held, that under section 5123, a city fireman may properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in

an amount equal to his monthly salary during the time of such incapacity, and that in such a case the provisions of this section and 5133, providing for a service pension and limiting it to one-half the monthly salary last received by such member have no application. *State ex rel. Barry v. O'Leary et al.*, 83 M 445, 449, 450, 272 P 677.

5133. Payment of service pension. Every fire department relief association nor or hereafter organized in this state which is now incorporated or which may hereinafter be incorporated may pay out of the disability and pension fund, service pensions in such amounts and in such manner as its by-laws shall designate, under the provisions of this act, not exceeding, however, one-half of the sum last received as a monthly salary by such pen-

sioned member monthly. Nothing herein contained shall be construed as permitting any member of a fire department relief association receiving benefits or allowances under the provisions of this act, and, at the same time, for the same casualty, an allowance under the Montana workmen's compensation act. In case of volunteer or call men such pension shall not exceed the sum of seventy five dollars (\$75.00) per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927.

Operation and Effect

Held, that under section 5123, a city fireman may properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in

an amount equal to his monthly salary during the time of such incapacity, and that in such a case the provisions of sections 5132 and this section, providing for a service pension and limiting it to one-half the monthly salary last received by such member have no application. State ex rel, Barry v. O'Leary et al., 83 M 445, 449, 450, 272 P 677.

5134. Pension to widows and orphans. Such fire department relief association may pay to the widow and orphans of deceased firemen in such sums and under such limitations and conditions as its by-laws shall provide, and not contrary to the laws of this state, a pension not exceeding however, a sum equal to one-half of the monthly salary last received by such deceased fireman, monthly to each pensioner or to any one family, with the right to increase or decrease the amount of such pension when on account of the amount of funds, or lack of funds on hand, or for other good cause, such reduction or increase seems to the association advisable or reasonable. In case of volunteer or call men the compensation shall be the same as paid firemen and not to exceed the sum of seventy-five dollars (\$75.00) per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927.

5135. Use of disability and pension fund of fire department relief association. Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.
2. A pension to a member who has become maimed or disabled in line of duty.
3. A benefit or allowance to a member who has suffered injury in line of duty.
4. A benefit or allowance to a member who has contracted sickness in line of duty.
5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of two hundred fifty dollars (\$250.00).
6. Payment of a pension to the widow, orphan or orphans of a deceased member.
7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them incurred in the line of duty in such fire department.

8. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R. C. M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931.

5136. Pensions exempt from legal process and non-assignable. Any payments made or to be made hereunder shall not be subject to judgments, garnishment, execution, or other legal process, and any person entitled to such pension shall not have the right to assign the same, nor shall the association or trustees have the authority to recognize any assignment or pay over any sum so assigned.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R. C. M. 1921.

5137. Source and control of funds. Such association and such board of trustees shall have full charge, management, and control of the funds herein provided for, which said funds shall be derived from the following sources:

1. From interest, rents, gifts, or money from other sources.
2. From funds received from the state of Montana.
3. From moneys raised by taxation under section 5119 of this code.

History: En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R. C. M. 1921.

5138. Hours of work for members of fire departments in first and second class cities. No fireman, or member or employee of the fire department of cities of the first and second class, shall be required to be on continuous duty to exceed fourteen (14) hours of each twenty-four (24) hour day, save and except the chief of such department, who shall be subject to call at any time; provided, that the chief of any department, or a captain thereof, may in his discretion, in cases of necessity, recall to service any member or employee of the fire department then off duty who shall be needed by such department at the time called; provided, however, that each and every salaried fireman shall be allowed one day off duty in each eight-day (8) period after the taking effect hereof, without loss of compensation.

History: En. Sec. 1, Ch. 91, L. 1917; re-en. Sec. 5138, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1927; amd. Sec. 1, Ch. 49, L. 1935.

Amendment by Ch. 49, L. 1935, held unconstitutional, by State ex rel. Kern et al. v. Arnold, Mayor, et al., 100 M —, 49 P 2d 976.

Section re-written as given in Ch. 135, L. 1927.

5139. Rules and regulations governing fire departments. The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules and regulations governing the employment of the members or employees of their respective fire departments not inconsistent with this act.

History: En. Sec. 2, Ch. 91, L. 1917; re-en. Sec. 5139, R. C. M. 1921.

5140. Appointment of chief engineer of fire department—his powers and duties. The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department, to man-

age and control the fire-engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires, to superintend and direct all fire companies, and to examine and inspect all buildings, chimneys, flues, and boilers, and other things within the city or town, and require the same to be put in a safe condition or removed, if liable to cause fire. In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same, and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907; re-en. Sec. 5140, R. C. M. 1921.

CHAPTER 392

FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS— FIRE COMPANIES AND FIRE DISTRICTS

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5141. Appointment of and duties of fire warden. The board of county commissioners must, upon petition of ten residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town or village, whose duty it is to examine all chimneys, stoves, stovepipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

History: En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907; re-en. Sec. 5141, R. C. M. 1921.

5142. Removal of dangerous chimneys, etc.—penalty. When any chimney, stove, stovepipe, oven, furnace, boiler, or appurtenance thereto is

defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire-warden, on complaint of any citizen, either orally or in writing, or upon his own examination, or other satisfactory proof, must give written notice to the owner or occupant of the building or premises, directing the owner or occupant to repair the same so as to make it secure against accident by fire; and he may in the notice require the occupant or owner to replace any defective flue or stovepipe with a new and safe one; and if the occupant or owner neglects for the space of three days to comply with the terms of said notice, he is guilty of a misdemeanor and punishable accordingly.

History: En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R. C. M. 1921.

5143. Fire companies—how organized. Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every three months. There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants, but one company must be allowed in any city, town, or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members.

History: En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R. C. M. 1921. Cal. Pol. C. Sec. 3335.

References

State v. Board of County Commissioners, 62 M 69, 70, 202 P 1108.

5144. Elect officers, make by-laws, exempt firemen. Every such fire company must choose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt by-laws and regulations, and impose penalties, not exceeding five dollars, or expulsion for each offense. The officers and members of unpaid fire companies regularly organized and exempt firemen are entitled to the following privileges and exemptions, viz: Exemption from payment of poll-tax, road-tax, and head-tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion, or insurrection. Every fireman who has served five years in an organized company in this state is an "exempt fireman," and must receive from the chief engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Each certificate entitles the holder to exemption from military and jury duty.

History: En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R. C. M. 1921.

5145. County clerk may issue exempt certificates. In lieu of issuing certificates to exempt firemen by the chief of the fire department, as pro-

vided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provision being made therefor in the by-laws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

History: En. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R. C. M. 1921.

5146. Seal and record of membership. Every fire department regularly organized may adopt a department seal, the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the by-laws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the by-laws provide for the faithful performance of his duties. The secretary of the fire department, or fire company must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated.

History: En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R. C. M. 1921.

5147. Duties of chief. The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R. C. M. 1921.

5148. Fire protection—establishment of fire districts. The board of county commissioners is authorized to establish fire districts in any unincorporated town or village, or any territory lying within ten (10) miles of the limits of any incorporated city whenever requested in writing so to do by the owners of fifty per cent (50%), or more, of the area included within the proposed district and who constitute a majority of the taxpayers who are freeholders of such territory and whose names appear upon the last completed preceding assessment roll; and at the time of the annual levy of taxes may levy a special tax upon all the property within such districts for the purpose of buying apparatus and

maintaining the fire department of any such district, and such tax must be collected as are other taxes. All moneys so collected by the county treasurer shall be disbursed by him upon warrants signed by the treasurer of the fire company and countersigned by its foreman. In the drawing of such warrants against the funds so collected by the county treasurer, the foreman and treasurer of the fire company shall be governed by the by-laws of such fire company. It is provided that the provisions of this section shall not apply to payment of bonds and interest thereon as provided by sections 5149 to 5158 of this code.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931.

References

State v. Board of County Commissioners, 62 M 69, 70, 202 P 1108.

5148.1. Establishment of fire limits within unincorporated towns. The board of county commissioners whenever a petition signed by two-thirds of the property owners of an unincorporated town is filed with them, are authorized, for the purpose of guarding against fire, to establish fire limits within the town and to prescribe rules and regulations for the construction and maintenance of fire proof buildings within such limits.

History: En. Sec. 1, Ch. 148, L. 1925.

5149. Commissioners ex-officio directors of fire districts—issuance of bonds—limitation on amount—election—term. Whenever the board of county commissioners shall have established a fire district in any unincorporated town or village, said board of county commissioners shall be and is hereby constituted ex-officio a board of directors of such fire district. The board of directors of any duly established fire district in unincorporated towns or villages within this state shall, whenever a majority of the directors so decide, submit to the electors of the district the question of whether the board shall be authorized to issue bonds to a certain amount, not to exceed three per cent of the percentum of the assessed value of the taxable property in such district, and bearing a rate of interest not exceeding six per cent, for the purpose of purchasing fire equipment, necessary lands, erecting buildings for fire purposes, acquiring a water supply, purchasing or otherwise acquiring or constructing a water system and establishing pipe lines. No such bonds shall be issued unless a majority of all the votes cast at any such election shall be cast in favor of such issue. Such bonds may be either amortization or serial bonds, but shall not extend over a longer term than ten years.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; amd. Sec. 1, Ch. 130, L. 1925.

References

Cited or applied in State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

5150. Bond elections, manner of conducting—form of ballots—form and issuance of bonds. The time fixed for holding such election must be at least thirty days after the date of the order calling such election. Notice of such election must be given by the board of directors by posting notices thereof, at least ten days before the day of election, in three public places within such district, one of which must be at the polling place. The board of directors must designate a polling place within such dis-

trict and name three persons residing therein, and who are qualified to vote at such election, as judges and clerks of such election, and a copy of the order fixing the day of election must be delivered to the county clerk and recorder of the county in which such district is located immediately after the same is made. Upon receipt of the copy of such order the county clerk and recorder must, at least twenty days before the day fixed for holding such election, cause a notice to be posted in at least three public places in such fire district, stating that the register of voters for the precinct in which such district is located will be closed on a day to be specified therein, and which must be the tenth day before the day for holding such election, and on the day specified therein the register of voters for such precinct must be closed and remain closed until after the holding of such election. The county clerk and recorder shall, immediately after the closing of registration for such precinct, make a copy of the register of voters for such precinct and deliver the same to the county treasurer who shall compare the same with the assessment books for the last assessment for state and county taxes, and note after the name of each person contained in such register whether such person's name appears on such assessment books, and make out and sign a certificate giving the names of all such persons whose names do appear on such assessment books and attach the same to such register, and the treasurer must then return such register to the county clerk and recorder who must deliver the same to the persons named as judges and clerks of such election. At such election no person whose name does not appear in such treasurer's certificate as a taxpayer whose name appears on the last assessment books shall be permitted to vote, and no person whose name does so appear in such certificate shall be permitted to vote unless he shall reside within the limits of the fire district, and every person offering to vote at such election, and otherwise qualified to do so, must make and subscribe an affidavit, before one of such judges of election, stating that he actually resides within the limits of such fire district, and all such affidavits shall be preserved and delivered to the board of directors of the district at the same time the returns are delivered to such board. The polls for such election shall be opened at 1 o'clock in the afternoon and remain open until 6 o'clock in the afternoon. The judges and clerks shall count the votes cast at such election and shall make a return thereof to the directors of district, who shall canvass and declare the result of such election. The board of directors shall cause the affidavits herein provided for and the ballots to be prepared for such election in a number equal to the total number of registered electors in the precinct in which the district is located, which ballots shall be substantially in the following form:

"Shall bonds be issued and sold to the amount ofdollars and bearing not to exceed 6% interest per annum and for a period not exceeding.....years for the purpose of (state purpose)."

☐

BONDS—YES.

☐

BONDS—NO.

The elector shall prepare his ballot by marking an X in the square before the proposition for which he desires to vote. If a majority of the votes cast at such election is in favor of issuing bonds the board of directors shall issue such bonds; such bonds shall be issued in substantially the same manner and form as bonds of school districts of the third class, shall bear the signature of the chairman of the board of directors, and of the county recorder, as ex-officio secretary of the fire district; if coupons are attached to the bonds they shall also be signed by such chairman and secretary, provided that a lithographic, printed or engraved facsimile signature of the president and secretary may be affixed to the coupons if so recited in the bonds, and the seal of the fire district shall be affixed to each bond. Each bond shall be registered in the office of the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond and the person to whom the same is issued or sold; and the said bonds shall be sold by the board of directors as hereinafter provided.

History: En. Sec. 2, Ch. 107, L. 1911; re-en. Sec. 5150, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925.

5151. Notice of sale of bonds—proceeds and delivery. The fire directors shall give notice by advertisement in some newspaper published in this state, for a period of not less than four weeks, to the effect that the said fire directors will sell said bonds (briefly describing the same), and stating the time when and place where such sale will take place; provided, that the said bonds shall not be sold for less than their par value, and that the said directors are authorized to reject any bids, and to sell said bonds at private sale, if they deem it for the best interest of the district; and all moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which such district may be located, to the credit of said district, and the same shall immediately be available for the purpose authorized by this title; provided, that no such bonds shall be delivered by the board of directors unless the moneys therefor have been paid into the county treasury.

History: En. Sec. 3, Ch. 107, L. 1911; re-en. Sec. 5151, R. C. M. 1921.

5152. Liability on bonds. The faith of each fire district is solemnly pledged for the payment of the interest and redemption of the principal of the bonds which shall be issued under the provisions of this act. And for the purpose of enforcing the provisions of this act, each fire district shall be a body corporate, which may sue and be sued by or in the name of the board of fire directors of such district.

History: En. Sec. 4, Ch. 107, L. 1911; re-en. Sec. 5152, R. C. M. 1921.

5153. Levy and collection of tax. The fire directors of each district shall ascertain and levy annually the tax necessary to pay the interest when it becomes due, and a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said fire district, and be collected in the same manner as other taxes for fire purposes.

History: En. Sec. 5, Ch. 107, L. 1911; re-en. Sec. 5153, R. C. M. 1921.

5154. Payment and liquidation of bonds. The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay annually a portion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and divide it by the number of years said bonds have to run; and all money so levied, when collected, must be paid into the county treasury to the credit of such district, kept in a separate fund, and be used for the payment of principal and interest on said bonds, and for no other purpose; provided, that the board may, with the surplus of such sinking fund, when the same shall be one thousand dollars or more, purchase any of the outstanding bonds issued by the board. Such purchase shall be made at the lowest price such bonds can be purchased at, but at no more than par value of such bonds; and whenever there shall be such a surplus of sinking fund amounting to the sum of one thousand dollars, the board shall purchase therewith like bonds on the same terms and conditions as hereinbefore specified.

If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of directors, at such times as the board shall direct, in the interest-bearing bonds of the United States or of the state of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner, and for the same purpose, as sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of directors shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; provided, further, that if at any time the board shall deem it best, it shall be lawful to sell such bonds for the purpose of purchasing the bonds issued by such board; but all such sales shall be at the highest market price, and the bonds of the board, purchased with the proceeds of such sale, shall be purchased at the lowest price they can be obtained for, and not above the par value of such bonds; provided, further, that the bonds first maturing shall be purchased, if they can be purchased, on terms as favorable to the board as others offered for sale to the said board. All bonds of the said board purchased under the authority hereby given, or paid by the board, shall be forthwith canceled as provided in the next succeeding section.

History: En. Sec. 6, Ch. 107, L. 1911; re-en. Sec. 5154, R. C. M. 1921.

5155. Sinking fund and redemption. When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bondholder, if known to him, and shall post in his office a notice that he will, within thirty days from the date of

such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed, by writing across the face of such bond or bonds, in red ink, the word "Redeemed," and the date of such redemption; provided, that whenever, in the judgment of the board of fire directors and prior to the redemption of said bonds, said board shall deem it advisable and for the best interests of the fire district to invest said sinking fund, or any part thereof, the board may, by an order entered upon their minutes, direct and require the county treasurer to invest said sinking fund, or any part thereof, in state or county bonds or warrants until such redeemable period.

History: En. Sec. 7, Ch. 107, L. 1911; re-en. Sec. 5155, R. C. M. 1921.

5156. Payment of interest by county treasurer. The county treasurer shall pay out of any moneys belonging to a fire district the interest upon any bonds issued under this title by such district, when the same shall become due, upon the presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it belonged; and all coupons so paid shall be reported to the fire directors at their first meeting thereafter.

History: En. Sec. 8, Ch. 107, L. 1911; re-en. Sec. 5156, R. C. M. 1921.

5157. Printing of bonds and coupons. The fire directors of any district shall cause to be printed or lithographed, at the lowest rates, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said fire district.

History: En. Sec. 9, Ch. 107, L. 1911; re-en. Sec. 5157, R. C. M. 1921.

5158. Failure to pay proceeds of sale of bonds into treasury. If any of the fire directors of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this title, they shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years.

History: En. Sec. 10, Ch. 107, L. 1911; re-en. Sec. 5158, R. C. M. 1921.

5158.1. Volunteer firemen's compensation act. This act shall be known and may be cited as the Volunteer Firemen's Compensation act.

History: En. Sec. 1, Ch. 65, L. 1935.

5158.2. Volunteer firemen's compensation fund. There shall be and hereby is created a fund to be known as the volunteer firemen's compensation fund.

History: En. Sec. 2, Ch. 65, L. 1935.

5158.3. Disability benefits allowed. Every member of a fire company organized in an unincorporated town or village under the laws of this state,

shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or non-confined, in the following amounts:

a. If confined to a hospital, the actual cost of hospitalization, and the reasonable charges of a duly licensed physician or surgeon, not to exceed two hundred fifty dollars (\$250.00).

b. If not confined to a hospital, the actual reasonable charges of a duly licensed physician or surgeon, not to exceed seventy-five dollars (\$75.00).

c. If confined to his home, and such confinement necessitates the services of a nurse, then the actual charges of such nurse, together with the actual reasonable charges of attending physician or surgeon, not to exceed one hundred seventy-five dollars (\$175.00).

History: En. Sec. 3, Ch. 65, L. 1935.

5158.4. Qualification for compensation. In order to qualify for the compensation herein provided, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

History: En. Sec. 4, Ch. 65, L. 1935.

5158.5. Claim for compensation—contents—filing—limitation on time for filing. A fireman claiming compensation hereunder must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one year from date of disability.

History: En. Sec. 5, Ch. 65, L. 1935.

5158.6. Payment of claim. Upon the receipt of a claim by the industrial accident board, if the same is found to be in compliance with the provisions of section 5158.5, the board must order the allowance thereof, and pay the

same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

History: En. Sec. 6, Ch. 65, L. 1935.

5158.7. Administration of act. The industrial accident board of the state of Montana shall administer this act, and all payments made hereunder shall be made from the volunteer firemen's compensation fund, by warrants drawn by the board upon such fund.

History: En. Sec. 7, Ch. 65, L. 1935.

5158.8. Rules and regulations to be made by industrial accident board. The industrial accident board shall make such rules and regulations as it deems necessary and advisable in the administration of this act not inconsistent with the provisions hereof. Necessary expenses for office supplies, stationery and forms shall be a charge against the fund.

History: En. Sec. 8, Ch. 65, L. 1935.

5158.9. Earnings to be part of fund. All earnings made by the volunteer firemen's compensation fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund.

History: En. Sec. 9, Ch. 65, L. 1935.

5158.10. Report of industrial accident board under act. The industrial accident board shall, at the time specified in section 2968 for making report therein provided, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration under this act, with such suggestions or recommendations as it may deem of value for public information.

History: En. Sec. 10, Ch. 65, L. 1935.

5158.11. Fire insurance premium tax to be paid into fund. The state auditor and ex-officio commissioner of insurance of the state of Montana shall annually cause to be deposited in the "Volunteer Firemen's Compensation Fund," herein created, such sum as shall be equivalent to 5 per cent of premium taxes collected from fire insurance companies pursuant to section 6112, as shall remain after the amounts provided for by section 5127, shall have been first deducted.

History: En. Sec. 11, Ch. 65, L. 1935.

5158.12. Penalty for false statements or claims. Any person required to make a statement or affidavit hereunder, who shall wilfully falsify such statement or affidavit, and any person who shall file a false claim hereunder, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not exceeding five hundred (\$500.00) dollars, or to undergo imprisonment not exceeding six months, or both such fine and imprisonment.

History: En. Sec. 12, Ch. 65, L. 1935.

CHAPTER 393

PARKS AND PLAYGROUNDS—BOARD OF PARK COMMISSIONERS

- Section 5159. Public parks and grounds—additional indebtedness of municipalities to provide.
5160. Powers of municipal councils not affected.
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- 5163. Funds—how disbursed.
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- 5167. Power of municipal council with respect to same.
- 5167.1. Council's power to procure and set aside land for athletic fields and civic stadiums—jurisdiction.

5159. Public parks and grounds—additional indebtedness of municipalities to provide. A city or town council, or commission, in addition to the power it now has under the law, has and is hereby granted and given the further power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the purpose of purchasing and improving lands for public parks and grounds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not at any time exceed three per centum of the per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; and provided, further, that no money must be borrowed on bonds issued for the purchase of lands and improving same for public parks and grounds until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby, and a majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 55, L. 1909; re-en. Sec. 5159, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1923.

5160. Powers of municipal councils not affected. Nothing in this act shall be so construed as to repeal or annul section 5039 of this code, or any part or portion thereof.

History: En. Sec. 2, Ch. 55, L. 1909; re-en. Sec. 5160, R. C. M. 1921.

5161. Park commissioners—appointment and organization—records and reports. There is hereby created in all cities of the first and second class a board of park commissioners, which shall be composed of the mayor of the city and six other persons, to be appointed by the governor of the state. The six persons so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 5004 of this code, for the office of mayor. The term of office of each park commissioner shall be two years from and after the first day of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that three of the commissioners first appointed shall hold office for the period of one year from and after the first day of May, 1901, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the city government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by section 430 of these codes, which oath shall be filed in the office of the city clerk.

On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president, and one of their number vice-president, who shall hold their offices respectively for the term of one year. The president, and in his absence, the

vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board, and perform such other duties as shall be required and directed by the board. The city clerk shall be ex-officio clerk of the board of park commissioners, and shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "Record of Board of Park Commissioners of the City of". It shall be the duty of the city clerk, as such clerk of the board of park commissioners, to keep an accurate account of all transactions of said board separate from other city accounts, and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all of the receipts and disbursements made by the board during the year, which report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer, and he shall perform such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem. to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board. The minutes of said meeting in said record book contained, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R. C. M. 1921.

NOTE.—In the case of *Gerry v. Edwards*, 42 M 135, 111 P 734, the supreme court held the act of 1901 referred to in the history of the above section unconstitutional in so far as it attempted to confer upon the park board the power to

levy taxes and violative of the theory of local self-government.

Operation and Effect

Matters pertaining to the creation and maintenance of public parks in cities are of a purely local and private concern, over which, under the doctrine of self-government, the municipalities have exclusive control. *State ex rel. Gerry v. Edwards*, 42 M 135, 151, 111 P 734.

5162. Powers and duties. The board of park commissioners shall have the management and control of all parks belonging to the city, and of all trees and other plants upon the streets, avenues, boulevards, and public places within the city, and the right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards, and public places. Said board of park commissioners shall have the following powers and be charged with the following duties:

1. To lay out, establish, improve, and maintain parkways, drives, and walks in the parks of the city, and to make plats thereof and to file the same in the office of the city clerk, and to determine when and what parks shall be opened to the public.

2. To cultivate, plant, maintain, and improve all trees and other plants required to be planted, cultivated, and maintained in the parks belonging to the city, and in the streets, avenues, boulevards, and public places in the city, and for that purpose to establish and maintain nurseries for the growth of trees and plants.

3. To make all rules and regulations necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues,

alleys, boulevards, and public places under the care and control of said board, and for the protection of all birds inhabiting, frequenting, or nesting in such parks, streets, avenues, boulevards, and public places, and all rules and regulations for the use of parks by the public, and to provide penalties for the violation of such rules and regulations, which rules and regulations shall have the force of city ordinances and be enforced in like manner as ordinances of the city are enforced.

4. To employ and discharge workmen, laborers, engineers, foresters, and others, and to fix their compensation, which shall not be less than the union scale of wages in force in each individual city of the first class; and to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this act, and to pay all obligations authorized to be incurred by the provisions of this act.

5. To lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the city; provided, that such lands shall not be leased for a longer term at any one time than five years, and not for a longer time than one year without the concurrence of two-thirds of the entire board of park commissioners.

6. To exercise all other powers incident to the duties enjoined by the provisions of this act.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R. C. M. 1921.

from this code by the code commissioner, 1921.

References

NOTE.—See note to preceding section. So much of the above section as was declared unconstitutional has been omitted

Cited or applied as section 2, laws of 1901, p. 73, in *State ex rel. Gerry v. Edwards*, 42 M 135, 141, 111 P 734.

5163. Funds—how disbursed. All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the city treasurer, which shall be signed by the city clerk and countersigned by the president, or, in his absence by the vice-president of the board of park commissioners. All moneys raised by tax for park purposes, or received by the board of park commissioners for the sale of hay, trees, plants, or from the leasing of park lands, or from any other source, shall be paid into the city treasury, and the city treasurer shall keep all such moneys in a separate fund to be known as the park fund. Such board shall have no power to incur liability on behalf of the city in excess of moneys on hand in, or taxes actually levied for, said park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R. C. M. 1921.

5164. Meetings—general regulations. Said board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each year, at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president, or, in his absence, the vice-president, upon giving to each member of said board at least twenty-four hours' notice in writing of the time and place of holding such meeting. A majority of the entire board

shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. No park commissioner shall be interested in any contract made by the board or by its authority, or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect, for the period of three consecutive months, to attend the meetings of said board without leave of absence from said board, or who shall fail for the period of twenty days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the city, and shall be signed by the city clerk and by the president, or, in his absence, by the vice-president, of said board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R. C. M. 1921.

5165. Allowance of claims. Said board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing, verified by the oath of the claimant or his or its authorized agent, shall have been filed in the office of the clerk of said board; provided, that no order or resolution providing for the payment or expenditure of money, or creating an obligation in excess of the sum of twenty-five dollars, or authorizing the making of any contract, shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes by the clerk.

History: En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R. C. M. 1921.

5166. Cities and towns authorized to establish swimming pools, skating-rinks, and playgrounds. All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, may, in their discretion, construct, establish, maintain, and operate swimming pools, skating-rinks, and playgrounds within said cities or towns, and to defray the cost and expense of constructing, establishing, maintaining, and operating the same from the park funds of said city or town.

History: En. Sec. 1, Ch. 41, L. 1917; re-en. Sec. 5166, R. C. M. 1921.

5167. Power of municipal council with respect to same. Power and authority is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all by-laws, ordinances, resolutions, rules, and orders necessary for the establishment, maintenance, regulation, and operation of swimming pools, skating-rinks, and playgrounds constructed and operated within their limits, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using the same.

History: En. Sec. 2, Ch. 41, L. 1917; re-en. Sec. 5167, R. C. M. 1921.

5167.1. Council's power to procure and set aside land for athletic fields and civic stadiums—jurisdiction. Every city or town council shall have power to acquire by gift, purchase or condemnation, lands for athletic fields and civic stadiums within or without the corporate limits of the municipality, to establish and regulate such fields and civic stadiums, to exercise municipal jurisdiction over the lands so acquired where such lands, or any portion thereof, are without corporate limits of the municipality to the same extent as though they were within said corporate limits and the city or town councils are authorized to set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums and also to construct, maintain and regulate athletic and civic stadiums thereon.

History: En. Sec. 1, Ch. 68, L. 1929.

CHAPTER 394

PUBLIC CEMETERIES—CONTROL BY CITIES AND TOWNS

Section 5168. Title to cemetery grounds.

5169. What constitutes a cemetery.

5170. Cemeteries—how laid out and dedicated on public lands.

5171. Inhabitants of city, town, or village to own cemetery.

5172. Public cemeteries, under whose control.

5173. Who exercise jurisdiction and control over.

5174. Register must be kept.

5168. Title to cemetery grounds. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village, and used by the inhabitants thereof continuously, without interruption, as a burial-ground for five years, is vested in the inhabitants of such city, town, or village, and the lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed, and no other interred therein, upon the order of the board of county commissioners, city council, or other body having authority, when it appears that the public health is endangered, or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907; re-en. Sec. 5168, E. C. M. 1921. Cal. Pol. C. Sec. 3105.

5169. What constitutes a cemetery. Six or more human bodies buried at one place constitutes the place a cemetery.

History: En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907; re-en. Sec. 5169, R. C. M. 1921. Cal. Pol. C. Sec. 3106.

5170. Cemeteries—how laid out and dedicated on public lands. Incorporated cities or towns, and for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate of the public lands situated in or near such city, town, or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the office of the county clerk of the county in which the same is located.

History: En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 5170, R. C. M. 1921. Cal. Pol. C. Sec. 3107.

5171. Inhabitants of city, town, or village to own cemetery. The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation lands not exceeding one hundred and sixty acres, to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes, must thereafter be used for no other purpose, except as provided in section 5168.

History: En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907; re-en. Sec. 5171, R. C. M. 1921. Cal. Pol. C. Sec. 3108.

5172. Public cemeteries, under whose control. The public cemeteries of cities, towns, villages, or neighborhoods must be inclosed and laid off into lots, and the general management, conduct, and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots, keeping the same in order, are under the jurisdiction and control of the cities and towns owning the same, if incorporated; if not, then under the jurisdiction and control of the board of county commissioners of the county in which they are situated.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R. C. M. 1921. Cal. Pol. C. Sec. 3109.

5173. Who exercise jurisdiction and control over. The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right by taxation to raise money, purchase land, lay out cemeteries, and manage them.

History: En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907; re-en. Sec. 5173, R. C. M. 1921.

5174. Register must be kept. The authority having the control of a public or private cemetery must require a register of name, age, birth-place, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

History: En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907; re-en. Sec. 5174, R. C. M. 1921.

CHAPTER 395

DISPOSAL OF IMPOUNDED ANIMALS

Section 5175. Impounding animals—duties of cities and towns.

5176. Contents of notice.

5177. Service upon owner.

5178. Service upon secretary livestock commission.

5179. Service by registered mail.

5180. Duty officers to ascertain brands.

5181. Secretary livestock commission to ascertain owner—notice.

5182. Provisions of act mandatory.

5175. Impounding animals—duties of cities and towns. Hereafter, when any livestock or domestic animals of any kind are impounded, seized, restrained or held by any city or town, or its officers or agents, it shall be

the duty of such city or town, its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained or held by such city or town, if the owner is known, in the manner hereinafter provided.

History: En. Sec. 1, Ch. 161, L. 1921; re-en. Sec. 5175, R. C. M. 1921.

5176. Contents of notice. Said notice shall be in writing and shall give the number, description, marks and brands of such stock when impounded, seized, restrained or held, with the reasons therefor, together with the amount of charges, if any, which shall be reasonable, and in no case exceed the actual cost of holding, and costs in event of sale, and what disposition will be made of said stock if such charges are not paid, and when and where such disposition shall be made.

History: En. Sec. 2, Ch. 161, L. 1921; re-en. Sec. 5176, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1927.

5177. Service upon owner. If such owner be known, and if his postoffice address shall be known as hereinbefore specified, such notice shall be served upon him or her personally.

History: En. Sec. 3, Ch. 161, L. 1921; re-en. Sec. 5177, R. C. M. 1921.

5178. Service upon secretary livestock commission. If such owner be unknown or if such owner is known but his postoffice address is unknown, such notice shall be served upon the secretary of the Montana livestock commission.

History: En. Sec. 4, Ch. 161, L. 1921; re-en. Sec. 5178, R. C. M. 1921.

5179. Service by registered mail. Service of such notice may be made personally or by registered mail, postage prepaid, properly addressed and placed in the United States postoffice, and at least eight days before the day fixed for the disposition of said stock.

History: En. Sec. 5, Ch. 161, L. 1921; re-en. Sec. 5179, R. C. M. 1921.

5180. Duty officers to ascertain brands. It shall be the duty of such city or town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked, or the brand or marks are mutilated or undeterminable, such facts shall be noted in said notice.

History: En. Sec. 6, Ch. 161, L. 1921; re-en. Sec. 5180, R. C. M. 1921.

5181. Secretary livestock commission to ascertain owner—notice. It is hereby made the duty of the secretary of the Montana livestock commission, upon service upon him of such notice, to ascertain the owner of such stock, if possible, and when the owner is ascertained, to immediately furnish such owner with the information contained in said notice, and to notify the said city or town, its officers or agents, of the name and postoffice address of such owner.

History: En. Sec. 7, Ch. 161, L. 1921; re-en. Sec. 5181, R. C. M. 1921.

5182. Provisions of act mandatory. The provisions hereof are mandatory and the owner of such livestock will not lose title or right of possession to his said stock unless the provisions hereof are strictly complied with.

History: En. Sec. 8, Ch. 161, L. 1921; re-en. Sec. 5182, R. C. M. 1921.

CHAPTER 396

MUNICIPAL REGULATION OF PLUMBING—PLUMBING LICENSE

- Section 5183. Plumbers must procure license.
 5184. Application for license.
 5185. Board of plumbing examiners—examination of applicants.
 5186. Application by master or journeyman plumber for license.
 5187. Examination fees—renewal of licenses.
 5188. Apprentices—rules and regulations.
 5189. Use of moneys paid as license fees.
 5190. Revocation of licenses.
 5191. Quorum of board of examiners.
 5192. Issuance of license without examination.
 5193. Violation of law a misdemeanor.

5183. Plumbers must procure license. Any person working at the business of plumbing, in any incorporated city or town in this state containing more than three thousand inhabitants, either as a master plumber or as a journeyman plumber, shall first secure a license as hereinafter provided.

History: En. Sec. 1, Ch. 29, L. 1913;
 re-en. Sec. 5183, R. C. M. 1921.

Constitutionality

Defendant was convicted in a justice court of engaging in the business of plumbing without obtaining a license (this section et seq.); he appealed to the district court where, after trial, the court entered

judgment that the statute in question was unconstitutional and discharged defendant. The state appealed. Held, that the judgment does not fall within any one of the provisions of section 12108, granting the state the right of appeal in a criminal case, and appeal dismissed. *State v. Wright*, 91 M 427, 8 P 2d 646.

5184. Application for license. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a license with the secretary of the board of examiners of such city or town, and shall, at such time and place as may be designated by the board of examiners of plumbers of such city or town, be examined as to his qualifications for working in such business.

History: En. Sec. 2, Ch. 29, L. 1913; re-en. Sec. 5184, R. C. M. 1921.

References

State v. Wright, 91 M 427, 8 P 2d 646.

5185. Board of plumbing examiners — examination of applicants. Within sixty days after this act becomes a law, the mayor of each such city or town shall appoint a board of plumbing examiners, consisting of three members—one journeyman plumber, one master plumber, and the health officer of said city or town. Two of the members of said board shall be practical plumbers, well versed in modern sanitary plumbing, sanitation, and sewerage, and the members of said board shall serve for a period of three years from the date of their appointment; provided, however, the first board shall serve as follows: One member for one year, one member for two years, and one member for three years, and the mayor in making the appointment, shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board, or when a vacancy occurs, the mayor shall make a new appointment for unexpired term, or for a period of three years. In those cities which have a plumbing inspector, such plumbing inspector, shall, ex-officio, be a member of such board of examiners. The members of the said board shall be entitled to a compensation of five dollars per diem, each, for each and every day while actually engaged in the

work of the board; the compensation, however, to be paid from the revenues realized under the provisions of this act, but not otherwise. Any applicant for a license to work at the business of plumbing in any such city or town shall be examined as to his qualifications by the board of examiners of plumbers for such city or town. It shall be the duty of the said board to examine each applicant for a license as provided for in this act, two to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or a journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber in any of said cities or towns.

History: En. Sec. 3, Ch. 29, L. 1913; re-en. Sec. 5185, R. C. M. 1921.

References

State v. Wright, 91 M 427, 8 P 2d 646.

5186. Application by master or journeyman plumber for license. Any person, firm, or corporation, desiring to engage in or work in the business of plumbing, either as a master plumber or as a journeyman plumber, in any of said cities or towns, shall apply to the secretary of said board of plumbing examiners in such city or town, by filing a written application with the secretary of the board, stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at such time and place as may be designated by the said board, as herein provided for, be examined as to his qualifications for said license. In the case of a firm or corporation, the examination and issuing of a license to any one member of the firm, or to the manager of the corporation, shall satisfy the requirements of this act as to master plumbers, but not as to journeymen plumbers; provided, however, that no person shall do the work of a master plumber unless licensed as provided for in this act.

History: En. Sec. 4, Ch. 29, L. 1913; re-en. Sec. 5186, R. C. M. 1921.

5187. Examination fees—renewal of licenses. No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of ten dollars as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of two dollars as an examination fee, such examination fee to be returned to the applicant in case he fails to pass the examination and is refused a license; each license when issued shall expire one year from the date of its issuance, and shall have no force or effect after the expiration of one year after the date of its issuance. Any license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the secretary of the said board of plumbing examiners, and the payment of the sum of two dollars and fifty

cents for a renewal of a master plumber's license, and the sum of one dollar for a journeyman plumber's license, and any such renewal shall also be for the period of one year.

History: En. Sec. 5, Ch. 29, L. 1913; re-en. Sec. 5187, R. C. M. 1921.

5188. Apprentices—rules and regulations. Nothing in this act shall prohibit any person from working as an apprentice in said trade of plumbing with a plumber duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by said board of plumbing examiners; provided, the name and residence of each apprentice, and the names and residences of their employers, shall be duly filed with said board, and a record in a suitable book, to be provided by said board, shall be kept by said board, showing the names and residences of such apprentices.

History: En. Sec. 6, Ch. 29, L. 1913; re-en. Sec. 5188, R. C. M. 1921.

5189. Use of moneys paid as license fees. All moneys paid for license fees as provided for in this act shall be placed in the custody of the city or town treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the board of examiners of plumbers in any such city or town in carrying out the provisions of this act.

History: En. Sec. 7, Ch. 29, L. 1913; re-en. Sec. 5189, R. C. M. 1921.

5190. Revocation of licenses. The license and permit granted as herein provided may be at any time revoked for incompetency, dereliction of duty, or other sufficient cause, after a full and fair hearing by said board.

History: En. Sec. 8, Ch. 29, L. 1913; re-en. Sec. 5190, R. C. M. 1921.

5191. Quorum of board of examiners. A majority of said board of plumbing examiners shall constitute a quorum for the purpose of transacting any and all business that may come before the board.

History: En. Sec. 9, Ch. 29, L. 1913; re-en. Sec. 5191, R. C. M. 1921.

5192. Issuance of license without examination. All master and journeymen plumbers, now engaged in the business of actually or regularly working at the trade of plumbing shall be entitled to a license, to be issued by said board of plumbing examiners immediately after its organization as provided for by this act, without submitting or being required to submit to any examination whatever, upon the payment by each of the applicants for such license of the sum of ten dollars in the case of the master plumber, and two dollars in the case of a journeyman plumber, and such license, when issued, shall be renewed from time to time annually as hereinbefore provided.

History: En. Sec. 10, Ch. 29, L. 1913; re-en. Sec. 5192, R. C. M. 1921.

5193. Violation of law a misdemeanor. Any person working at the business of plumbing, or maintaining or conducting a plumbing shop in any incorporated city or town in this state, containing more than three thousand inhabitants, who violates any provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of

competent jurisdiction, shall be punished by a fine of not less than ten dollars and not more than one hundred dollars for each separate offense.

History: En. Sec. 11, Ch. 29, L. 1913; re-en. Sec. 5193, R. C. M. 1921.

CHAPTER 397

TAXATION AND LICENSES

- Section 5194. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park purposes.
5195. Cities and towns may raise money by taxation in excess of levy now permitted, how.
5196. Notice of election.
5197. Submission of question to state object of levy—use of funds—balance.
5198. Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election.
5199. Registration of electors.
- 5199.1. Qualifications for voting on creation or increasing indebtedness.
- 5199.2. Lists of registered voters—posting.
5200. Special taxes and assessments.
5201. Taxes in cities and towns which have exceeded the constitutional limit of indebtedness.
5202. City authorized to levy special taxes.
5203. Annual tax—equalization and collection.
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5194. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park purposes. The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities of the first class with a population of thirty-five thousand or over must not exceed one and two-tenths per centum of the assessed value of the taxable property in all such cities of the first class, and all other cities and towns must not exceed one and one-half per centum on the per centum of the assessed value of the taxable property of the city or town; and the council in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of maintaining public parks, the council in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding two mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925. Cal. Pol. C. Sec. 4371.

Operation and Effect

Construing prior to amendments of 1923 and 1925, this court held, under this section, that a city had the power to levy special taxes for the purpose of paying interest on bonded indebtedness and creating a sinking fund, and that the contention that the taxing power of a city of a class other than the first class was limited to a ten mill levy for all purposes by this section, has no merit. *First Nat. Bank of Glendive v. Sorenson*, 65 M 1, 5, 210 P 900.

Construing prior to amendments of 1923 and 1925, this section provides that towns may levy taxes for general municipal purposes, not to exceed ten mills on the as-

essed value of their taxable property. Under sections 1999 and 2000, the "taxable value" of property of different classes is fixed at a certain percentage of the assessable value, that of real property being fixed at thirty per cent of its assessed value. Defendant town assumed to levy a tax of twenty mills, contending that on the value as fixed by sections 1999 and 2000, the tax so imposed did not exceed ten mills on the assessed value as fixed by this section. Held, in an action to recover taxes paid on real property under protest, that this section and sections 1999 and 2000 being in irreconcilable conflict, and such sections (1999, 2000) being the later enactments, are controlling to the extent of the repugnancy, that the taxable value as fixed by those sections, and not the assessed value fixed by this section, is the standard prescribed for computing taxes, and that therefore the tax in excess of ten mills on the dollar of taxable value was invalid. *Wibaux Improvement Co. v. Breitenfeldt*, 67 M 206, 207 et seq., 215 P 222.

5195. Cities and towns may raise money by taxation in excess of levy now permitted, how. Whenever the council of any city or town shall deem it necessary to raise money by taxation, in excess of the levy now allowed by law, for any purpose for which said city or town is authorized to expend moneys raised by taxation in said city or town, it shall submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy shall not exceed five mills.

History: En. Sec. 1, Ch. 12, L. 1919; re-en. Sec. 5195, R. C. M. 1921.

References

Wibaux Improvement Co. v. Breitenfeldt, 67 M 206, 208, 215 P 222.

5196. Notice of election. Where the question of making such additional levy is so submitted, notice thereof shall be given by publication for at least thirty days prior to such election in every newspaper published in said city or town, and by posting a like notice for the same period of time in a public place in each ward of said city or town.

History: En. Sec. 2, Ch. 12, L. 1919; re-en. Sec. 5196, R. C. M. 1921.

5197. Submission of question to state object of levy—use of funds—balance. The submission of said question shall expressly provide for what purpose such additional levy is to be made, and, if authorized, the money raised for such additional levy shall be used for that specific purpose only; provided, that if any balance remain on hand after the purpose for which said levy was made has been accomplished, such balance may, by vote of the council, be transferred to any other fund of said city or town.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R. C. M. 1921.

5198. Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election. If at any time it is desired

to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots, each of which ballots shall be in substantially the following form: Shall the city (or town) council be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made.)

☐

Against Additional Levy.

☐

For Additional Levy.

The voters shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state. The election shall be held and the votes canvassed and returned as in other city or town elections. If the majority voting on the question are in favor of such additional levy or levies, the city or town council shall so certify, and such additional levy or levies of taxes shall be made by the city or town council for that year.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R. C. M. 1921.

5199. Registration of electors. The council may provide by ordinance for the registration of qualified electors who are tax-paying freeholders in such city or town, and no person shall be entitled to register or vote at such election who is not such tax-paying freeholder and qualified elector.

History: En. Sec. 5, Ch. 12, L. 1919; re-en. Sec. 5199, R. C. M. 1921.

5199.1. Qualifications for voting on creation or increasing indebtedness. That from and after the passage and approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929.

Operation and Effect

Held, on original application for writ of injunction, that the provisions of this section et seq., and not sections 5009, 5278 and 5279, govern the procedure to be followed for the registration of electors and their qualifications in a special city election called for the purpose of submitting to them the question of the issuance of city water plant bonds. *Weber v. City of Helena et al.*, 89 M 109, 112 et seq., 297 P 455.

Id. By the enactment of chapter 47, laws of 1929, amendatory of chapter 98, laws of 1923 (this section), the legislature intended to provide the procedure for the holding of all elections called for the purpose of determining whether in-

debtedness of the political units therein mentioned shall be created or increased when the approval of the electors is required by law, including the issuance of city water bonds.

Id. Held, that where a city mistakenly called and conducted a special election submitting the question of increasing its indebtedness by the issuance of bonds for water plant purposes under sections of the revised codes which had been superseded by this section, none of the provisions of which chapter were observed, the election was void irrespective of the good faith in which the city authorities acted.

References

State ex rel. *Henderson v. Dawson County*, 87 M 122, 142, 286 P 125.

5199.2. Lists of registered voters—posting. The county clerk shall, immediately after the closing of the registration books of his county preceding such election, as provided by law, prepare lists of the registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll, and shall prepare poll-books therefor as provided by section 568, and furnish copies thereof to the city, town, school district or municipal corporation in which such election is to be held for which he shall receive compensation as provided in section 571. When the election is upon a proposal to create or increase the indebtedness of a city, town, school district or other municipal corporation, the county clerk shall deliver such lists to the clerk of the city, town, school district or other municipal corporation, holding such election, and it shall be his duty to post such lists in the manner provided in section 567.

History: En. Sec. 2, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929.

5200. Special taxes and assessments. The council may also assess and levy the special taxes or assessments provided for in sections 4955 through 5309.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R. C. M. 1921.

Operation and Effect

Held, under this section, that a city had the power to levy special taxes for the purpose of paying interest on bonded in-

debtedness and creating a sinking fund, and that the contention that the taxing power of a city of a class other than the first class was limited to a ten mill levy for all purposes by section 5194, has no merit. *First Nat. Bank of Glendive v. Sorenson*, 65 M 1, 6 et seq., 210 P 900.

5201. Taxes in cities and towns which have exceeded the constitutional limit of indebtedness. All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds the limit provided in section 6, article XIII of the constitution, may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; re-en. Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R. C. M. 1921; amd. Sec. 2, Ch. 175, L. 1925.

5202. City authorized to levy special taxes. Hereafter any city, the indebtedness of which equals or exceeds said limit, shall be authorized to levy and collect special taxes for municipal and administrative purposes, and the city council in making such levy shall designate the amount thereof for each of said purposes, and each tax, when collected, shall constitute a fund out of which the expenses incurred for the purpose for which such tax was levied shall be paid. The expenses incurred for any such purpose shall be paid out of the fund so to be provided therefor, and not otherwise.

History: En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R. C. M. 1921.

5203. Annual tax—equalization and collection. The council has power to levy, collect, and equalize annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy, assessment, equalization, and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R. C. M. 1921.

Operation and Effect

Under this section and section 5216, as the latter stood before its amendment, a town council had power to levy taxes, and taxes levied for street purposes could not be worked out by taxpayers, if they elected to do so under the law as it then

existed. Town of White Sulphur Springs v. Pierce, 21 M 130, 132, 53 P 103.

This section and city ordinances must yield to chapter 96, laws of 1923, fixing the time and method of collecting taxes and interest thereon. Thomas v. City of Missoula et al., 70 M 478, 482, 226 P 213.

References

State ex rel. Malott v. Cascade Co., 94 M 394, 411, 22 P 2d 811.

5204. Levy, etc., to be made under this chapter. Until the passage of such ordinance the levy, assessment, equalization, and collection of municipal taxes are, and the proceedings for such purposes must be, as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R. C. M. 1921.

5205. Basis of taxation. The assessment made by the county assessor for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R. C. M. 1921.

Operation and Effect

The municipal authorities of an incorporated city could make a legal assessment in electing to take the assessment made by the county and state assessing authorities as the basis for the levy of municipal taxes on property within such city; and the levy of lawful taxes thereon by such city, according to the provisions of its charter and ordinances, constituted a legal levy. Lockey v. Walker, 12 M 577, 583, 31 P 639.

Under this section and section 5216, as it stood prior to its amendment, the assessment of property of a city was not completed until the date of the resolution

of the city council fixing and levying the amount of taxes to be levied and assessed for such year. State ex rel. City of Butte v. Johnson, 16 M 570, 572, 41 P 706.

Under the provisions of this section and other statutes applicable and in force from time to time, the basis of taxation for a city or town has been the valuation made by the county assessor for state and county purposes. The city or town council has had no authority to amend or change the items listed in the roll furnished by him, its office being merely to ascertain the rate of taxation necessary to produce the amount required to meet the expenses of the city or town government, and to certify it to the county treasurer. Lockey v. City of Bozeman, 42 M 387, 397, 113 P 286.

5206. Duty of county assessor. It is the duty of the county assessor, in making the assessment-book, to designate therein the real and personal property, stating each separately and distinctly, situated in the cities and towns within the county.

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R. C. M. 1921.

References

State ex rel. Blair v. Kuhr, 86 M 377, 283 P 758.

5207. Copies of assessment-books to be furnished cities and towns. On or before the second Monday in July of each year the assessor must furnish to all cities of the third class and towns within his county which

shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of his assessment-book, so far as such assessment-book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch 69, L. 1911; re-en. Sec. 5207, R. C. M. 1921.

5208. Charge of assessor for making copies. The assessor may charge such cities and towns five cents per folio of one hundred words for each copy of his assessment-book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R. C. M. 1921.

5209. Equalization of taxes. The equalization of assessments of property made by the county board of equalization applies to the assessment of property in any city or town, and must be taken as the equalization thereof. But the council may at any time after the adjournment of said board, upon good cause shown, reduce the city or town taxes or penalties thereon as is just and equitable, or order any tax that has been improperly assessed or paid by mistake to be refunded.

History: En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R. C. M. 1921.

5210. Affidavit of aggrieved party. The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 5210, R. C. M. 1921.

5211. Preparation of assessment-book. It is the duty of the county clerk, on or before the first Monday in October in each year, to make a duplicate of the corrected assessment-book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled "The Duplicate Assessment-Book for the City of", and must contain a copy of the "corrected assessment-book" of the county as far as the same refers to city property.

History: En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R. C. M. 1921.

original or duplicate is delivered to the county treasurer. State ex rel. City of Butte v. Weston, 29 M 125, 129, 74 P 415.

References

Cited or applied as section 4867, political code, before amendment, in State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706.

Operation and Effect

It is the duty of the county clerk to deliver to the city treasurer the duplicate assessment-book required by this and the following sections at the same time the

5212. Book to be furnished by city. Such duplicate must be made in a book furnished by the city clerk of each city in the county, and ruled in columns specifying the different funds so that the city treasurer may extend the same and collect the taxes.

History: En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R. C. M. 1921.

ical code, before amendment, in State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706; as amended, in State ex rel. City of Butte v. Weston, 29 M 125, 126, 74 P 415.

References

Cited or applied as section 4868, polit-

5213. Delivery of book to city clerk. The county clerk must deliver such duplicate assessment-book to each city treasurer, and take his

receipt therefor, having attached thereto the affidavit similar to the one set out in section 2161 of this code.

History: En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R. C. M. 1921.

Operation and Effect

The word "similar" in this section does not require the county clerk to make

an affidavit identical with the one required by section 2161, but merely requires an affidavit covering all the facts showing that the clerk had done his duty in making the copy of the assessment-book. State ex rel. City of Butte v. Weston, 29 M 125, 131, 74 P 415.

5214. Collection of taxes—delinquent taxes. The county treasurer of each county must collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment-book. The county treasurer must collect such city or town taxes, including unpaid road poll-taxes, at the same time as the state and county taxes, with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county treasurer as provided by law, shall be credited to the state, county, and city or town, pro rata, in the same proportions as provided in sections 2234 and 2235 of these codes.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R. C. M. 1921.

Operation and Effect

Under this section, the county treasurer must collect taxes for a city or town which has not by ordinance placed the duty of collection upon its own treasurer, no provision, however, being made as to when the money so collected must be turned over to the city or town treasurer. Held, that the county treasurer must within a reasonable time after collection compute the amount due the city or town and pay it over to the proper custodian, and that the lapse of one month after collection of the bulk of the city or town taxes is not a reasonable time within which to perform that duty. State v. McNamer, 62 M 490, 494, 205 P 951.

Where a city has failed to provide by ordinance for the collection of its taxes by its own treasurer, the treasurer of the county in which such city is situated must, under this section, collect and pay

them to the city treasurer without delay. State v. McFarlan, 78 M 156, 158 et seq., 252 P 805.

"Tax" and "Taxes"

Assessments for special city improvements which under section 5251, the county treasurer is required to collect, held to fall within the meaning of the words "tax" and "taxes" as employed in this section, making it the duty of the county treasurer to collect city taxes where a city has not imposed that duty upon its own treasurer. State v. McFarlan, 78 M 156, 158 et seq., 252 P 805.

References

Cited or applied as section 4870, political code, before amendment, in Town of White Sulphur Springs v. Pierce, 21 M 130, 132, 53 P 103; State ex rel. City of Butte v. Weston, 29 M 125, 126, 74 P 415; Loekey v. City of Bozeman, 42 M 387, 397, 113 P 286; as section 3356, in City of Butte v. Bennetts, 51 M 27, 30, 149 P 92; School District No. 1 v. City of Helena, 87 M 300, 307, 287 P 164.

5215. Repealed—Chapter 163, laws of 1935.

5215.1. Delinquent tax—sales of property taxed or specially assessed by cities or towns. Whenever, in a city or town whose treasurer collects its own taxes or special assessments, or both thereof, any such taxes or

assessments shall become delinquent, no tax sale shall be held by such city or town treasurer therefor, but such city or town treasurer must, within ten (10) days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated. Such certificate shall contain the description of each lot or parcel of land on which any tax or assessment has become delinquent, the name and address of the person to whom assessed, the date when the same became delinquent, the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added. If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate, provided, however, that if the city or town council, by the adoption of an appropriate resolution shall declare the whole of the assessment remaining unpaid to be delinquent, as provided in section 5251, then the whole of the assessment remaining unpaid shall be included in such certificate.

Upon receipt of such certificate the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county and state taxes and special assessments, with the penalties, interest and costs provided by law.

History: En. Sec. 1, Ch. 148, L. 1927.

Operation and Effect

Held in an action in mandamus to compel a county treasurer, under this section to spread upon the delinquent taxroll of the county certain assessments for special city improvements which became delinquent on a city lot after the county had

bought it in at a tax sale that special assessments are not taxes within the meaning of section 2215, that therefore the liens of such assessments were extinguished upon issuance of the tax deed, and hence that the county treasurer could not be compelled to spread the assessments upon his records. *State v. Jeffries*, 83 M 111, 114, 270 P 638.

5215.2. Collection of delinquent taxes by cities authorized. All cities in the state of Montana, who by ordinance provide for the collection of city taxes and assessments, are hereby authorized and empowered to solicit payment, ask for, receive and receipt for delinquent taxes and assessments due any such city, and upon receipt of payment thereof by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated, the fact of such payment with the amount thereof, a description of the property charged with such delinquent taxes or assessments so paid and the name of the person to whom the same were assessed; provided, however, that nothing in this act is intended to or shall prevent the county treasurer of the county in which such city is situated to collect such delinquent taxes or assessments, but is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933.

5216. Fixing amount of tax levy—certification to county or city clerk. The council must on or before the second Monday of August of each year, by resolution, determine the amount of the city or town taxes for all pur-

poses, to be levied and assessed on the taxable property in the city or town, for the current fiscal year and the city or town clerk must at once certify to the county clerk a copy of such resolution and the county treasurer must collect said taxes as in this chapter provided. Provided, that in cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer.

History: En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1925.

Operation and Effect

The requirement of this section that after the city council had determined the amount of city taxes to be levied on city property for all purposes, the city clerk must certify the resolution passed by the council in that behalf to the county clerk, held to have been sufficiently complied

with by his attestation, the terms "certify" and "attest" meaning substantially the same thing, to-wit, that what appears in the instrument is genuine or true. *Morse v. Kroger et al.*, 87 M 54, 59, 285 P 185.

References

Cited or applied as section 4872, political code, before amendment, in *State ex rel. City of Butte v. Johnson*, 16 M 570, 571, 41 P 706; *Town of White Sulphur Springs v. Pierce*, 21 M 130, 132, 53 P 103; *First Nat. Bank of Glendive v. Sorenson*, 65 M 1, 6, 210 P 900; *State v. McFarlan*, 78 M 156, 161, 252 P 805.

5217. Fiscal year. The fiscal year of cities and towns commences on the first day of July of each year, and ends on the last day of June of each year.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907; re-en. Sec. 5217, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1927.

5218. Annual appropriation—manner and time of making. The council must, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the.....of.....for the fiscal year beginning July 1, 19.....," in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for such fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid to each officer of the city or town.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R. C. M. 1921; amd. Sec. 2, Ch. 25, L. 1927.

Operation and Effect

The fact that the city council, in ac-

cordance with this section, appropriated a sum to pay for water furnished under a contract, does not make the city liable therefor, since the contract out of which the liability arose is void, and no lawful authority to pay it exists. *State ex rel. Helena W. W. Co. v. City of Helena*, 24 M 521, 537, 63 P 99.

5219. Road poll-tax. All able-bodied male inhabitants of a city or town, between the ages of twenty-one and forty-five years, must pay an annual road poll-tax not exceeding three dollars.

History: En. Sec. 4875, Pol. C. 1895; re-en. Sec. 3361, Rev. C. 1907; re-en. Sec. 5219, R. C. M. 1921.

References

Cited or applied as section 4875, polit-

ical code, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; as section 3361, revised codes, in *Ford v. City of Great Falls*, 46 M 292, 304, 127 P 1004.

5220. List of persons liable for poll-tax. The city clerk must make a list of all persons liable for such tax, and present the same to the council

for inspection and correction at a regular or special meeting to be held not later than the third Monday of May. On or before the first regular meeting in June the council must direct a copy of such list, as corrected, certified by the clerk, to be delivered to the city treasurer, and the city treasurer must forthwith collect such taxes from the persons named in the list, and from such other persons liable for the same as he may add thereto; provided, that any person who is assessed for a property tax in the city may pay such poll-tax at the time he pays his general tax, and in such case the poll-tax shall be added upon the assessment list to other taxes of persons liable therefor paying taxes upon real and personal property, by the county clerk upon a list of the names of persons liable for the same being certified to by the city clerk.

History: En. Sec. 436, 5th Div. Comp. Stat. 1887; amd. Sec. 4876, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3662, Rev. C. 1907; re-en. Sec. 5220, R. C. M. 1921.

References

Cited or applied as section 4876, political code, before amendment, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756.

5221. Duties of city clerk and treasurer. The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll-tax provided for in sections 2273 to 2295, inclusive, of this code.

History: En. Sec. 4877, Pol. C. 1895; re-en. Sec. 1, p. 225, L. 1897; re-en. Sec. 3363, Rev. C. 1907; re-en. Sec. 5221, R. C. M. 1921.

References

Cited or applied as section 4877, political code, before amendment, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756.

NOTE.—Sees. 2273 to 2295, inclusive, herein referred to were repealed by ch. 163, L. 1935.

5222. Poll-tax—how expended. The money so collected must be expended for street purposes in the city or town. No street or alley in a city or town is a county road or a part thereof, nor constitutes a part of a road district of a county.

History: En. Sec. 4878, Pol. C. 1895; re-en. Sec. 3364, Rev. C. 1907; re-en. Sec. 5222, R. C. M. 1921.

References

Cited or applied as section 4878, political code, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; as section 3364, revised codes, in *Ford v. City of Great Falls*, 46 M 292, 304, 127 P 1004.

5223. Work on the streets, etc. The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R. C. M. 1921.

References

Cited or applied as section 4879, political code, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; as section 3365, revised codes, in *Ford v. City of Great Falls*, 46 M 292, 304, 127 P 1004.

5224. License tax may be levied. The council may, by ordinance, license all industries, pursuits, professions and occupations, as provided in section 5039.3, of this code, and the city treasurer must collect the same in the manner and at the time prescribed by ordinance. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R. C. M. 1921.

Operation and Effect

What is a reasonable license fee must depend largely upon the sound discretion

of the city council, having reference to the circumstances and necessities of the case. Unless, however, the amount is manifestly unreasonable, in view of its

purpose as a regulation, the court will not adjudge it a revenue measure. City of Bozeman v. Nelson, 73 M 147, 155, 237 P 528.

CHAPTER 398

SPECIAL IMPROVEMENT DISTRICTS

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5225. Special improvements—powers of city council. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purpose of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

History: En. Sec. 1, Ch. 89, L. 1913;
re-en. Sec. 5225, R. C. M. 1921.

NOTE.—For history of early improvement district acts, see *Stadler v. City of Helena*, 46 M 128, 127 P 454; sections 3367 to 3412, revised codes 1907 (except sections 3368 and 3390 to 3395), were repealed by chapter 89, laws of 1913, which is here given as amended.

References

Cited or applied as chapter 89, laws of

1913, in *Hinzeman v. City of Deer Lodge*, 58 M 369, 375, 193 P 395; *Aiken et al. v. City of Glendive et al.*, 60 M 1, 2, 197 P 1003; *Evans et al. v. City of Helena et al.*, 60 M 577, 588, 199 P 445; *Murray et al. v. City of Helena et al.*, 65 M 485, 211 P 197; *Bush v. Grandy et al.*, 66 M 222, 226, 213 P 242; *Thomas v. City of Missoula et al.*, 70 M 478, 483, 226 P 213; *Stanley v. Jeffries*, 86 M 114, 130, 284 P 134.

5226. Special improvement districts—placing wires underground—cost per lineal foot. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grass-plots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; waterworks, water-mains, and extensions of water-mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection,

tunnels, viaducts, conduits, subways, break-waters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and break-waters, levees, retaining walls and bulkheads; walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

It is further provided that the council shall have the same jurisdiction and powers as in this section above provided, to (before doing any of the work mentioned in this act) require any public service corporation, or company, firm, or person occupying such streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, place in an underground conduit in such manner as may be directed by the city council, all wires, electric conduits, telephone, telegraph, power, or power transmission lines, or appurtenances thereto, or appliances owned, held, or enjoyed in connection therewith; provided, however, that the whole cost so assessed shall at no time exceed the sum of one dollar and fifty cents per lineal foot, plus the cost of the pipe so laid of the entire length of the water-mains laid in such district.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R. C. M. 1921.

Constitutionality

Laws providing for the creation of special improvement districts, and imposing a tax by way of assessment upon the property legislatively determined to be benefited, are not open to the objection that they deprive the owner of his property without due process of law. *McMillan v. City of Butte*, 30 M 220, 225, 76 P 203.

Id. In the absence of proof that the burden imposed on a property owner by a municipal assessment is altogether out of proportion to the benefit actually accruing to the property, he cannot assert that his property is thereby taken without compensation.

Assessments for special municipal improvements, such as the construction of

sewers or the building of sidewalks, are not taxes, and constitutional and statutory provisions exempting property from taxation have no application to such assessments. *City of Kalispell v. School District 45 M 221, 226, 122 P 742.*

Federal Property

Where property belonging to the federal government abuts on a street for the purpose of paving which a special improvement district is created, the city may devote its street fund or any money in its treasury not otherwise appropriated to the payment of that portion of the improvement which, but for its exemption from such imposition, would be properly assessable against such property. *Ford v. City of Great Falls*, 46 M 292, 308, 127 P 1004.

Id. The constitutional provision that a state shall not impose any taxes upon property therein belonging to the United States

includes special assessments for street improvements.

Id. Where streets are to be improved, the fact that property, exempt from special assessment, such as that of the federal government and its instrumentalities, lies on one side of one of the streets is no obstacle to the city's proceeding with the improvement of that street.

Limitation of Cost

The limitation of \$1.50 per lineal foot placed upon municipal improvements by this section has no application to street grading, draining, paving or curbing and gutter work. *Reeve v. City of Billings*, 57 M 552, 189 P 768.

Operation and Effect

A law providing for the creation of special improvement districts is a legislative declaration that all the property in the proposed district is benefited by the improvement, and to the same extent. *McMillan v. City of Butte*, 30 M 220, 224, 76 P 203.

The property of a school district, devoted exclusively to public school purposes, is, in the absence of express constitutional or statutory exemption, liable for the payment of assessments made for special municipal improvements. *City of Kalispell v. School District*, 45 M 221, 230, 122 P 742.

The statutes of this state relating to the creation of special improvement districts not only qualify and limit the powers which the city council may exercise, but they define with particularity the mode in which the restricted authority may be used, and compliance with their provisions is the *sine qua non* to the creation of a special improvement district for making improvements the expenses of which is to be a charge against the property included. *Shapard v. City of Missoula*, 49 M 269, 279, 141 P 544; *Cooper v. City of Bozeman*, 54 M 277, 283, 169 P 801; *Johnston v. City of Hardin*, 55 M 574, 581, 179 P 824.

Where an owner joined in a petition for the creation of a special improvement district, and thereafter, in creating it, a large part of the property described therein was excluded by the city council, the petitioner was not estopped to subsequently attack the validity of the creation by the fact that he joined in the petition. *City of Lewistown v. Warren*, 52 M 356, 357, 157 P 954.

Theory of Act

The whole theory of local taxation or assessments is that the improvements for which they are levied afford a remuneration in the way of benefits. *Power v. City of Helena*, 43 M 336, 341, 116 P 415.

With respect to special improvements, the "superficial area" rule is the rule of this state; it amounts to a legislative declaration that all property in a proposed district is, presumptively, equally benefited by the improvement contemplated. *Mansur v. City of Polson*, 45 M 585, 595, 125 P 1002.

References

This act is cited or applied as chapter 89, laws of 1913, as amended, in *Hawley v. City of Butte*, 53 M 411, 412, 164 P 305; before amendment, in *Chicago, Milwaukee & St. Paul Ry. Co. v. Poland*, 54 M 497, 501, 172 P 541; *Eby v. City of Lewistown*, 55 M 113, 117, 173 P 1163.

Cited or applied as section 2, chapter 89, laws of 1913, before amendment, in *Shapard v. City of Missoula*, 49 M 269, 275, 141 P 544.

Aiken et al. v. City of Glendive et al., 60 M 1, 2, 6, 197 P 1003; *Evans et al. v. City of Helena et al.*, 60 M 577, 588 et seq., 199 P 445; *Rush v. Grandy et al.*, 66 M 222, 226, 213 P 242; *Ricker et al. v. City of Helena et al.*, 68 M 350, 358 et seq., 218 P 1049; *Thomas v. City of Missoula et al.*, 70 M 478, 483, 226 P 213; *Stanley v. Jeffries*, 86 M 114, 130, 284 P 134; *Lumbermen's Trust Co. v. Town of Ryegate*, 50 F 2d 219, 61 F 2d 14.

5226.1. Connections with water and gas-pipes. The city or town council shall have power to require connections from gas-pipes, water-pipes, steam-heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located, and to regulate the making of such connection on the streets already improved, or on unimproved streets; and in case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, they may cause such connections to be made, and shall assess against the property in front of which said connections are made the entire cost and expense thereof. All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided.

for in article V of this chapter, and amendments thereof, and all such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R. C. M. 1921.

ter 3 of the political code of 1895, which in these codes is sections 5203 to 5224.

References

NOTE.—From the context the above reference to “article V of this chapter” would seem to allude to article 5 of chap-

Lumbermen’s Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

5227. Resolution of intention—notice—materials. Before creating any special improvement district for the purpose of making any of the improvements, or acquiring any private property for any purpose authorized by this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements which are to be made, and an approximate estimate of the cost thereof; provided, however, that when any improvement is to be made in paving, the city or town council may in describing the general character of the same describe several kinds of paving. Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having property within the proposed district at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights of way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and one foot on each side of the rails to be of a different kind from that used in the remainder of the street; providing that the general character of the material to be used between the car tracks and one foot on each side of the rails be described in the resolution of intention, in the same manner as the general character of the material used for the rest of the contemplated pavement.

The lots or portions of lots fronting upon said excepted work, already done, shall not be included in the assessment for the class of work from which the exception is made; provided, that this shall not be construed

so as to affect the special provisions as to grading contained in section 5238 of this code.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R. C. M. 1921.

Boundary

Under this section, a city has the power to fix the boundary of a special improvement district at any distance from the front line of a street and is not required to include the whole platted area of each lot. *Ricker et al v. City of Helena et al.*, 68 M 350, 360 et seq., 218 P 1049.

Departure from Resolution

One who charges that a contemplated municipal improvement has been materially and substantially changed by the city council from the original plan as evidenced by the resolution authorizing it, has the burden of proving the materiality of the change. *Mansur v. City of Polson*, 45 M 585, 594, 125 P 1002.

In its resolution of intention to create a special improvement district, the city council must describe the character and nature of the contemplated improvements with sufficient particularity to advise the taxpayer affected, and the improvements to be made must correspond substantially with those set forth in the resolution, and no material change or departure therefrom can be made. *Evans et al v. City of Helena et al.*, 60 M 577, 588 et seq., 199 P 445.

Id. Under a resolution of intention to create a special improvement district for the purpose of paving streets, with the necessary excavations, cutting, filling, etc., and "incidental work," held that defendant city was properly enjoined from entering into a contract the provisions of which departed substantially from the purposes set forth in the resolution, in that they included reduction in the street widths and the construction of new parking, curbing and storm sewers, each of which constitutes a distinct city improvement under this section, and none of which was therefore subject to inclusion under the term "incidental work."

Discretion of Council

The city council as a special tribunal to conduct the hearing is clothed with limited powers only, and no presumption in favor of its jurisdiction will be indulged. The statute measures its authority, and compliance with the terms of the statute is a condition precedent to the right to act. *Johnston v. City of Hardin*, 55 M 574, 579, 179 P 824.

In an action to set aside the proceedings of a city council had in the creation of a special street improvement district and to enjoin the carrying out of a paving contract entering into, on the grounds that

the city had joined in one district property abutting on several streets, that the character of work to be done on one street was different from that to be done on others, and that property on several streets would not be benefited by the paving on another, proceedings reviewed and held, in view of the power lodged in the city council by this section to include in one district and in one contract any number of streets, any kind of work, etc., that the council did not abuse its discretion. *Ricker et al v. City of Helena et al.*, 68 M 350, 360 et seq., 218 P 1049.

Necessary Steps to Create Districts

The successive steps necessary to be taken by a city council in the creation of a special improvement district are: (1) The adoption of a resolution of intention; (2) the service of the required notice; (3) a hearing and determination against protests; and (4) the passage of a resolution creating the district, the first three of which are jurisdictional, and a failure to take any one of these is fatal to the proceedings. *Shapard v. City of Missoula*, 49 M 269, 273, 141 P 544; *Johnston v. City of Hardin*, 55 M 574, 579, 179 P 824.

Notice

The contents of the resolution, in so far as they relate to notice of what improvements are contemplated, are for the legislature to dictate, and so long as a reasonably comprehensive notice is provided for, the courts have no power to declare it insufficient, and a detailed description of the work intended to be done is unnecessary. *Mansur v. City of Polson*, 45 M 585, 593, 125 P 1002.

Publication of a notice of intention to create a special improvement district which contained the proper reference to time and place for hearing objections to its final adoption was sufficient. *Allen v. City of Butte*, 55 M 205, 207, 175 P 595.

The caption of a notice is no part of the notice itself, and cannot be looked to to supply any deficiency in the notice. *Johnson v. City of Hardin*, 55 M 574, 581, 179 P 824.

Id. In the absence of the statutory notice of the city council's intention to create a special improvement district, plaintiff property owner was not called upon to act, an inference deducible from his complaint that he had actual knowledge that his property was to be included in the proposed district being insufficient.

A resolution passed by the town council reciting the creation of an improvement district and that the resolution should be deemed one of intention to cre-

ate, and creating it, followed by a description of its boundaries and of the character of the proposed improvements, with an estimate of the cost, etc., and that objections to its creation and the final adoption of the resolution would be heard in a certain place at a given time, held to have been in substantial compliance with statutory provisions. *Harvey v. Town of Townsend et al.*, 57 M 407, 188 P 897.

Id. Failure of the notice mentioned in this section to refer to the resolution for a description of boundaries is insufficient to vitiate the proceedings.

Operation and Effect

A resolution providing that the cost of a special street improvement, comprising principal as well as side streets, should be paid for by the levy of an assessment based upon the "superficial area" rule, was not void as inequitable, in that under it owners of inside lots were required to bear the same proportion of expense as owners of corner lots of the same area, although the benefits to accrue to the former are disproportionate to those received by the latter. *Mansur v. City of Polson*, 45 M 585, 595, 125 P 1002; approving *McMillan v. City of Butte*, 30 M 220, 76 M 203.

To make the complaint of a property holder asking a court of equity to be relieved from the payment of a special improvement tax levied on his property for the purpose of defraying the cost of the construction of a storm sewer on the alleged ground that his property was so situated that it could not be benefited by the sewer, proof against a general demurrer, it must set forth that plaintiff appeared at the time and place designated in the resolution of the council for hearing objections to the proposed improvement, and that his protest was ignored; otherwise, after the improvement is made and warrants issued in payment thereof, he is estopped upon the face of his pleading. *Power v. City of Helena*, 43 M 336, 342, 116 P 415.

By a resolution to create a special improvement district described as being bounded by certain lots, such lots were not incorporated in, but excluded from, the proposed district. *City of Lewistown v. Warr*, 52 M 353, 355, 157 P 953.

Where no work has been done under contracts for the installation of a special improvement, or warrants issued, the claim that a liberal and indulgent view of faulty proceedings in creating the district should be taken has no merit. *Cooper v. City of Bozeman*, 54 M 277, 284, 169 P 801.

District sewers are such as accomplish the purpose of a sewer system without other or outside aid, except as they receive by the carrying off of their dis-

charges by the main trunk line—the public sewer; such sewers may be constructed by the creation of special improvement districts, under this section, and paid for by assessing the cost of the improvement against the property within the districts created. *Crutchfield v. Nash et al.*, 84 M 556, 563, 276 P 938.

Sufficiency of Resolution

Where a certain lot was assessed for municipal improvements for its entire area, the fact that only one-half of such lot was included in the description in the resolution creating the assessment district was immaterial. *McMillan v. City of Butte*, 30 M 220, 227, 76 P 203.

While a city council may not so change the nature of a special street improvement set forth in the resolution of intention as to be materially and substantially different from that authorized, and the cost of the same increased in proportion, work which substantially follows that outlined in the resolution, though omitting one feature of the contemplated improvement, is not open to complaint in this respect. *Mansur v. City of Polson*, 45 M 585, 594, 125 P 1002.

Though a mere informality in the resolution of intention to create an improvement district would not have rendered the effort of the city council to acquire jurisdiction nugatory, if the subsequent steps had been pursued in conformity with the statute, the proceeding was abortive where a resolution of intention was deemed sufficient to bring about the creation of the district. *Shapard v. City of Missoula*, 49 M 269, 280, 141 P 544. Compare *Cooper v. City of Bozeman*, 54 M 277, 283, 169 P 801.

The resolution of intention is the primary step to be taken in every instance and is the basis of the whole proceeding, the omission of which is fatal and renders all the subsequent proceedings nugatory. *Shapard v. City of Missoula*, 49 M 269, 279, 141 P 544.

Proceedings for the imposition of a special improvement tax are in invitum, and before property can be held subject to the burden, it must be described with sufficient certainty that the owner cannot be misled; it being the intention of the statute that the resolution of intention shall contain a description of the proposed district by a line which marks its exterior boundaries. *City of Lewistown v. Warr*, 52 M 353, 355, 157 P 953.

Before a special improvement district can be created, the city council must pass a resolution of intention to do so, give notice of its passage, etc. Where the council, in an endeavor to create such a district, passed a resolution which proclaimed the creation of the district and an intention to assess the property liable for

the cost of the improvement, the proceedings were void in limine for want of a proper resolution of intention. *Cooper v. City of Bozeman*, 54 M 277, 282, 169 P 801.

Id. Failure to pass a proper resolution of intention to create a special improvement district cannot be corrected by subsequent interpretation at the hands of the council, to the effect that the resolution passed was meant to operate as one of intention.

Where a resolution of intention to create a special improvement district described the boundaries of an entirely different district from that referred to in the notice served upon the owner of property affected, the city council did not acquire jurisdiction to proceed with the improvement. *Johnston v. City of Hardin*, 55 M 574, 580, 179 P 824.

A resolution of intention to create a special improvement district, the title of which stated that it was a "resolution of intention," etc., the body of which substantially contained the recitals required by statute and advised the taxpayers of the time and place where their objections to its creation would be heard, was sufficient as against the objection that in it the city council had not declared its intention to create it. *Aiken et al. v. City of Glendive et al.*, 60 M 1, 2, 197 P 1003.

5228. Assessment of extended district including lots not fronting on improvement. Whenever the contemplated work of improvement, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots or lands fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, the city council may make the expenses of such work or improvement chargeable upon an extended district and which may include other lots not fronting on the improvement, and which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvements and to be assessed to pay the costs and expenses thereof.

History: En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929.

Operation and Effect

In an action to recover improvement taxes paid under protest, held that, this section not so providing, a resolution of intention to create an extended improvement district including lots not fronting on the improvement, for the purpose of installing water-mains and fire protection

Description contained in resolution of intention to establish special improvement district for purpose of raising funds to pay for water system and improvement held sufficient. Improvement was described as the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection which were to be installed upon and along certain designated streets, so that without reference to plans or specifications subsequently filed, the length of the pipe was fairly disclosed by the resolutions. *Lumbermen's Trust Co. v. Town of Ryegate*, 61 F 2d 14.

Id. Where improvement was amply covered by general description contained in resolution of intention, that water-works were to be constructed outside of special improvement district for purpose of furnishing water for pipes laid in district held immaterial, so far as concerns description of work chargeable to district.

References

Cited or applied as chapter 89, laws of 1913, as amended, in *Hawley v. City of Butte*, 53 M 411, 412, 164 P 305; *Almas v. City of Havre*, 70 M 33, 35, 223 P 896; *Thomas v. City of Missoula et al.*, 70 M 478, 483, 226 P 213; *Lumbermen's Trust Co. v. Town of Ryegate*, 50 F 2d 219.

apparatus, need not recite that the contemplated work was of more than local or ordinary public benefit, the adoption of the resolution being a sufficient finding that in the opinion of the city council the proposed improvement was of that character. *Almas v. City of Havre*, 70 M 33, 223 P 896.

References

Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

5229. Protests against proposed work. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work, or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him. At the next regular meeting of the city council after the expiration of the time within which said protest may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of forty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city council finds that such protest is made by the owners of more than forty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said clerk of the city council; except in case the improvements are the construction of sanitary sewers, when the said protest may be overruled by an affirmative vote of a majority of the members of the city council; unless such protest is made by the owners of more than sixty per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewers.

In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923.

Effect of Action Against Protest

Taxes levied by a city for special improvement purposes are absolutely void, where the city council proceeds to create an improvement district, notwithstanding owners representing more than one-half of the area of the property to be assessed to defray the cost of such improvement, appear before it and object to the adoption of the resolution creating the district for the purpose indicated. *Hensley v. City of Butte*, 33 M 206, 210, 83 P 481.

Operation and Effect

For a decision under a former statute in regard to the right of property owners to appear before the council and protest against the making of the proposed improvement, see *Hensley v. City of Butte*, 36 M 32, 92 P 34.

The provision of this section that objections to a proposed special improvement shall be heard at the next regular meeting of the city council after the expiration of the fifteen days in which protest can be made, etc., is directory only. *Harvey v. Town of Townsend*, 57 M 407, 188 P 897.

Property Owned by City also Must be Computed

In determining whether forty per cent of the owners of property affected by a proposed special improvement have filed protests against it, the city or town council is authorized by this section to take into consideration property owned by it and included in the district, such property being subject to assessment therefor the same as privately owned property. *Ricker et al. v. City of Helena et al.*, 68 M 350, 358, 218 P 1049.

Sufficiency of Protest

An alleged protest to street paving, filed by abutting owners, stating the rea-

sons why they did not desire the paving done during a certain year, and stating that they were willing to have the street paved two years later, and that payment therefor should be required in three annual instalments, was not an unqualified protest to the paving. *McMillan v. City of Butte*, 30 M 220, 228, 229, 76 P 203.

Withdrawal from Protest

A property owner in a city, who has signed a protest against the creation of a special improvement district, may, within the time allowed for presenting such pro-

test, withdraw therefrom, and thus defeat the protest. *Hawley v. City of Butte*, 53 M 411, 413, 164 P 305.

References

Cited or applied as section 5, chapter 89, laws 1913, before amendment, in *Shapard v. City of Missoula*, 49 M 269, 277, 141 P 544; *Cooper v. City of Bozeman*, 54 M 277, 281, 169 P 801; *School District No. 1 v. City of Helena*, 87 M 300, 309, 287 P 164; *Lumbermen's Trust Co. v. Town of Ryegate*, 50 F 2d 219, 61 F 2d 14.

5230. Jurisdiction to order proposed improvements. When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. But before ordering any of said proposed improvements, the city council shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915; re-en. Sec. 5230, R. C. M. 1921.

Operation and Effect

It is only after the lapse of fifteen days from the first publication of notice of intention to create an improvement district, and after all protests have been disposed of adversely to objecting property owners, that the city council shall be deemed to have acquired jurisdiction to order the improvement. *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544.

By failure of an objecting property owner to give notice of defects or irregulari-

ties in the proceedings to the council within sixty days after the contract for the work is let, he waives all claim for damages, under this section. *Harvey v. Town of Townsend et al.*, 57 M 407, 188 P 897.

Id. The passage of the resolution creating a special improvement district constitutes a sufficient order for the making of the contemplated improvements.

References

Cited or applied as chapter 89, laws 1913, as amended, in *Hawley v. City of Butte*, 53 M 411, 412, 164 P 305; *Cooper v. City of Bozeman*, 54 M 277, 282, 169 P 801; *Almas v. City of Havre*, 70 M 33, 36, 223 P 896.

5231. Sufficiency of description after resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R. C. M. 1921.

5232. Bid for work and award of contract. Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semi-weekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three (3) public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under sections

5225 to 5257 of this code, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined, and declared.

The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, and said city council shall, in open session, publicly open, examine, and declare the same; provided, however, that no proposal or bids shall be considered unless accompanied by said check. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

If the bids are rejected, or no bids are received, the city council may, at any time within two (2) years thereafter, and whenever and as often as the city council deems it advantageous, re-advertise for proposals or bids for the performance of the work as herein provided, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per centum (50%) of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund. The provisions hereof shall be applicable to all special improvement districts created within one (1) year preceding the passage and approval of this act.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1931.

Operation and Effect

Contracts for the construction of spe-

cial street improvements, let without first giving ten days' notice for bids, and more than nine months after the award, were invalid as in contravention of the provisions of this section. *Cooper v. City of Bozeman*, 54 M 277, 284, 169 P 801.

5233. Contract by owner to do work. The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within three days after the said award, elect to take such work and enter into a written contract to do the whole work at a price at least five per cent. less than the price at which the same has been awarded, and all work done under such contract shall

be subject to the same plans and specifications governing the lowest responsible bidder. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within three days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R. C. M. 1921.

5234. Reletting contract after default of contractor. But if such original bidder neglects, fails, or refuses for fifteen (15) days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to the call for proposals, the council may again advertise for bids under the same proceedings at any time within six (6) months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1931.

5235. Default of contractor—reletting of work. If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the city council, which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance; or the city shall have the right at its option to complete the contract, and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor, or owners, and in the event there is no money, bonds, or warrants due such contractor or owners, from which to deduct such cost, then and in such event the city shall have the right to sue such contractor or owners, and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec. 5235, R. C. M. 1921.

5236. Bond of contractor. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council, with two or more sureties, and payable to such city, in a sum not less than twenty-five per cent. of the amount of the contract, conditioned for the faithful performance of the contract, and indemnifying the city from any detriment, damage, or loss growing out of said work; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that

nothing herein contained shall be construed as to prevent or prohibit the city council from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R. C. M. 1921.

5237. Notice of defective proceedings—penalty. At any time within sixty days from the date of the award of the contract any owner or other person, having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements, are irregular, defective, erroneous, or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the city clerk a written notice, specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding or in relation to the making of said improvements, not made in writing and in the manner and at the time aforesaid, and all claims for damages therefor, shall be waived by such property owner; provided the notice of the passage of the resolution of intention has been actually published and the notices of improvements posted, as provided in this act.

History: En. Sec. 13, Ch. 89, L. 1913; re-en. Sec. 5237, R. C. M. 1921.

NOTE.—So much of the above section as makes the giving of the notice necessary in order to maintain an action for damages was held unconstitutional in *Eby v. City of Lewistown*, 55 M 113, 120, 173 P 1163.

Operation and Effect

Failure of a property owner to appear before the city council to protest against the inclusion of his property in a special improvement district before its creation does not estop him from thereafter ques-

tioning the validity of its acts, where he relies on lack of jurisdiction in the council to act at all; in such case he may properly, under the provisions of this section, raise the question within sixty days from the date the contract for doing the work is awarded, by filing with the city clerk a written notice specifying in what particulars the acts of the council are irregular. *Crutchfield v. Nash et al.*, 84 M 556, 561 et seq., 276 P 938.

References

Cited or applied as section 13, chapter 89, laws of 1913, in *Harvey v. Town of Townsend*, 57 M 407, 413, 188 P 897.

5238. Methods for payments of improvements. To defray the cost of the making of any of the improvements provided for in this act, the city council shall adopt one of the two following methods of assessment:

(a) The city council shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street, or

bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement, that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 5228 of this code; and provided, further, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be and continue to be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway either in the operation of its cars or in the laying or repair of its tracks, and in case of a failure or refusal of such owner or operator so to repair such pavement within a reasonable time after notice by the city council, the city council is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

It shall be lawful for the owner or owners of lots or land fronting upon any street, the width and grade of which shall have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to estab-

lished width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (excepting grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925.

Damages

Evidence to show the cost of filling plaintiff's lots and raising his buildings to grade, and the market value of the property before and after making the improvement, was competent and material in an action to recover damages occasioned by the change. *Eby v. City of Lewistown*, 55 M 113, 128, 173 P 1163.

Id. Under allegations of the complaint that plaintiff's property had been permanently injured by change in street

grade, rendered inaccessible and undesirable for the purposes for which used, necessitating large expenditures in filling and adjusting the lots to grade, etc., and defendant's denial of any damage whatever, the latter was entitled to introduce evidence tending to show that the property had not been injured or that the damage was less than claimed by plaintiff.

Necessity of Notice

All statutory requirements as to the form and contents of a special improvement assessment must be substantially complied with, they being regarded as mandatory and jurisdictional, and the appor-

tionment of the cost is essential to the validity of the assessment, as is notice to the owners to enable them to be heard and contest if desired; failure to give notice will render the assessment void, whether or not notice is expressly required by law. *Morse v. Kroger et al.*, 87 M 54, 60, 285 P 185.

Objections to District

To estop a taxpayer from attacking the validity of the creation of a special improvement district by payment of an instalment of the tax, the payment must have been voluntarily made. A city could not be prejudiced by the payment of such instalment tax, which, being invalid, it was not entitled to collect, and was therefore not in a position to claim an estoppel. *City of Lewistown v. Warren*, 52 M 356, 357, 157 P 954.

Public and District Sewer Distinguished

The cost of constructing a public sewer, as distinguished from a district sewer, must be provided for, under the next sec-

tion, either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by this section. *Rush v. Grandy et al.*, 66 M 222, 226, 213 P 242.

What may be Assessed

An easement in a city street in favor of a railway company for right of way purposes in crossing it is not susceptible of assessment for a special improvement, where the basis adopted for apportioning the cost thereof is front footage; nor is the tract itself assessable under such plan, since under it the lot or parcel of land bordering or abutting on the street on which the improvement was made must bear the cost proportionately, and a street cannot border or abut upon itself. *Chicago, Milwaukee & St. Paul Ry. Co. v. Poland*, 54 M 497, 503, 172 P 541.

References

Stanley v. Jeffries, 86 M 114, 124, 284 P 134; *School District No. 1 v. City of Helena*, 87 M 300, 287 P 164.

5238.1. Including and assessing unplatted lands in improvement district. That whenever any unplatted, undedicated or unsurveyed lot, piece or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town, except land owned by the United States, shall abut or border upon any special improvement district, or be included within the boundaries of any special improvement district of such city or town, the council of such city or town may cause the same to be included within and made a part of such special improvement district, in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

History: En. Sec. 1, Ch. 16, L. 1923.

5239. Sewer systems. A sewer system may be established in a city or town, which system may be divided into public, district and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state. It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of

its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors who must be taxpaying freeholders, as shown by the last assessment for taxable purposes, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors who must be taxpaying freeholders, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council. This fund shall be used for (1) the payment of the cost of management, (2) maintenance, (3) operation and (4) repair of the sewage system, including treatment and disposal works, (5) for the creation of a sinking fund for the retirement of any indebtedness, (6) for the payment of interest on any such indebtedness, and any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment and disposal works, and for retiring such debt, but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those above specified.

Any twenty-five (25) or more freeholders of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipi-

pality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

It is further provided that all the provisions of this act referring to sewer rentals, shall apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, as provided for in chapter 133, laws of 1929 and the powers herein conferred on councils shall be and are hereby conferred on the several boards of county commissioners for the purposes of said chapter 133, laws of 1929—insofar as the same relates to sewers.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933.

NOTE.—The reference above to chapter 133, laws of 1929, refers to sections 4574, 4584 and 4592 of these codes.

Operation and Effect

The theory upon which a municipality may levy an assessment for a special improvement, such as the construction of a sewer, is that the property charged receives a corresponding physical, material and substantial benefit from the improvement. *Power v. City of Helena*, 43 M 336, 341, 116 P 415.

A “trunk” sewer, i.e., one which receives the discharge from district sewers, is a public sewer within the meaning of

this section. *Rush v. Grandy et al.*, 66 M 222, 226, 213 P 242.

Id. The cost of constructing a public sewer, as distinguished from a district sewer, must be provided for, under this section, either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by the preceding section.

Whether the expense of making a municipal improvement shall be paid out of the general treasury or be assessed upon abutting property or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited or alone upon that abutting, is a question of legislative expediency. *Crutchfield v. Nash et al.*, 84 M 556, 562, 276 P 938.

5240. Assessment to pay cost of improvements. To defray the cost of making improvements in any special improvement district, or of acquiring property for the opening, widening, or extending any street or alley, or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose, by using for a basis for assesment one of the methods set forth in section 5238 of this code. Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, and the amount of each partial payment to be made, and the day when the same shall become delinquent.

The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty years, payments to be made in equal annual instalments.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R. C. M. 1921.

5241. Hearing of objections—modification of assessment. Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which

objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within two days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R. C. M. 1921.

5242. Care of street parking—resolution levying assessment. Where trees have been planted, grass plots constructed, and grass sown thereon, or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed, and to otherwise maintain and preserve said improvements, as the council shall deem suitable and proper, and the whole cost of so maintaining said improvements in any improvement district shall be paid by assessing the entire district in either one of the two methods set forth in section 5238 of this code. It shall be the duty of said council to estimate, as near as practicable, the cost of maintaining the improvements in each district for the season; and before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining said improvements within the several districts, and in the manner as hereinabove provided. Said resolution levying assessments to defray the cost of maintenance of such improvements shall be in every manner prepared and certified to the same as a resolution levying assessments for making improvements in said special improvement districts, and the money collected therefore shall be paid into a fund known as "special improvement district No. maintenance fund," the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; provided, however, that the city council shall have the power not more than once in a year of changing by resolution the boundaries of any maintenance district.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R. C. M. 1921.

5243. Damages to property and payment thereof. Whenever the owner or any one interested in any property situated within any special improvement district, after having filed with the clerk the written notice required by section 5237 of this code, shall be awarded or recover any amount on account of damages sustained to such property by reason of the construction of any improvement in said special improvement district, if the resolution levying assessment to defray the cost of making such improvements in said district has not been passed and adopted by the city council, the amount so awarded or recovered shall be added to and constitute a part of the cost of the making such improvements; but if the resolution levying assessments to defray the costs and expenses of making said improvements has been passed and adopted by the city council, it shall pass and adopt a supplemental resolution levying addi-

tional assessments against all the property in said district for the purpose of paying the amount so awarded or recovered. Said supplemental resolution shall be made and in every manner prepared and certified the same as the original resolution levying assessments to defray the cost of making such improvements.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R. C. M. 1921.

89, laws 1913, before amendment, in Eby v. City of Lewistown, 55 M 113, 120, 173 P 1163.

References

Cited or applied as section 19, chapter

5244. Construction of sidewalks and curbs without formation of special improvement district. The city council may order sidewalks and curbs constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk or curb constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk or curb is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty days after the date of service of such notice to cause such sidewalk or curb to be constructed, the city may construct or cause such sidewalk or curb to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 5246 of this code, against the property in front of which the same is constructed.

When any such sidewalk or curb is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk and curb fund, which warrants shall bear interest at the rate of six per centum (6%) per annum, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks and curbs may be spread over a term of not to exceed eight years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks and curbs have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929.

5245. Interest on assessments. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at the rate of six per cent. per annum, and the treasurer, in collecting such special assessment taxes, if the same are payable in one instalment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in instalments the treasurer shall, at the time of

collecting the first instalment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent instalment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R. C. M. 1921.

5246. Costs and expenses considered as cost of improvements. The cost and expense connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R. C. M. 1921.

5247. Assessments as lien upon property. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R. C. M. 1921.

Operation and Effect

Where the city council had acquired jurisdiction to order a special improvement and levy the assessment to pay for it, the assessment became a lien against the property benefited by it from the date the assessment became due, not affected by the circumstance that plaintiffs had recovered judgments against the city for damages caused by the improvement. *Allen v. City of Butte*, 55 M 205, 209, 175 P 595.

Under our statutory provisions with relation to special improvements in cities and towns, any special assessment made and levied to defray the cost and expenses of special improvements constitutes a lien upon all property included in an improvement district, but, under the provisions

of section 2215, such a lien is extinguished by the issuance of a tax deed on sale of the property for delinquent taxes. (*State ex rel. City of Great Falls v. Jeffries, County Treasurer*, 83 M 111, 270 P 638). *Stanley v. Jeffries*, 86 M 114, 124, 284 P 134.

Advertising costs are also collectible by reason of this section and section 5214, to which section 5251 makes reference. (*State ex rel. City of Wolf Point v. McFarlan*, 78 M 156, 252 P 805). *School District No. 1 v. City of Helena*, 87 M 300, 287 P 164.

References

Thomas v. City of Missoula et al., 70 M 478, 483, 226 P 213; *State v. Jeffries*, 83 M 111, 116, 270 P 638; *State ex rel. Costello v. District Court*, 86 M 387, 391, 392, 284 P 128.

5248. Mistakes or misnomers not to invalidate assessment. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 24, Ch. 89, L. 1913; re-en. Sec. 5248, R. C. M. 1921.

5249. Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.
United States of America
State of Montana.

Warrant or Dollars
(Bond No.) \$.....
Interest at the rate of six per cent. per annum, payable annually. Special
Improvement District Coupon Warrant or Bond.

..... Montana,
Issued by the city of, Montana.
The treasurer of the city of, Montana, will pay to
....., or bearer, the sum of dollars
as authorized by resolution No. as passed on the day of
....., 19....., creating special improvement district No.
..... for the construction of the improvements and the work per-
formed as authorized by said resolution to be done in said district, and
all laws, resolutions, and ordinances relating thereto, in payment of the
contract in accordance therewith. The principal and interest of this war-
rant (or bond) are payable at the office of the city treasurer of.....,
Montana.

This warrant (or bond) bears interest at the rate of six per cent. per annum from the date of registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened, and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of, Montana, relating to the issuance thereof.

(Seal)
Dated at, Montana, this day of
....., 19.....
City of, Montana.
By....., Mayor.
....., City Clerk.

Registered at the office of the city treasurer of _____,
Montana, this _____ day of _____, 19_____.

City Treasurer.

. And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at the rate of six per cent. per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall be signed by the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signature of the mayor and clerk; provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council. Said bonds shall be in denominations of one hundred dollars or fractions or multiples thereof, and may be issued in instalments, and may extend over a period not to exceed twenty years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided, that the treasurer shall first pay out of such special improvement district fund annually the interest on all outstanding warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date, so fixed, interest shall cease. When it is provided by the resolution creating the district that the work be paid for in warrants (or bonds), the city council shall, by resolution, fix the denominations of such warrants (or bonds), which may be of one hundred dollars, or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent. per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty years from and after the date of issuance.

History: En. Sec. 25, Ch. 89, L. 1913;
amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec.
5249, R. C. M. 1921.

References
State ex rel. Clark v. Bailey, 99 M 454,
44 P 2d 740.

5250. Payment under contracts. The city or town council may provide for making payments for improvements in any special improvement district in one of the two following methods:

1. The council may provide in the contract for the making of the improvements that such contract shall be payable in bonds or warrants issued under the provisions hereof, and that such bonds or warrants shall be delivered to the contractor, or contractors, either in installments as the work progresses, or upon the entire completion thereof; provided, however, that no bonds or warrants must be delivered to the contractor or contractors in excess of the amount of work actually done at the time of delivery, nor shall the total amount issued be in excess of the total cost and expense of the improvements, and no bond or warrant shall be delivered or received in payment of a less sum than its face value.

2. The city or town council may sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, and may use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

When it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue, or alley, or to pay any amount awarded or recovered on account of damages to any property caused by the making of any improvements, in money in cases where the person whose property is so taken or damaged refuses to receive his pay in warrants or bonds, then the council shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants, for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1927.

Operation and Effect

Held, under this section, that the city council has no power to issue bonds or warrants at a discount in payment of special improvement work, and that therefore a contract let to one who in making

out his bid took into consideration the fact that the warrants he would receive were worth only ninety cents on the dollar, and therefore added ten per cent to the actual cost, was invalid as an attempt to do indirectly what the council was prohibited from doing directly. *Evans et al. v. City of Helena et al.*, 60 M 577, 588 et seq., 199 P 445.

5251. Collection by county treasurer—city treasurer to certify special assessments. It shall be the duty of the city or town treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of section 5216 of this code, immediately after the second Monday of August of each year, and at the same time the copy of resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by said section 5216, to certify to the county clerk of the county in which such city or town is situated all special assessments and taxes levied and assessed in accordance with any

of the provisions of this act, and the county treasurer must collect the same in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929.

to collect city taxes where a city has not imposed that duty upon its own treasurer. *State v. McFarlan*, 78 M 156, 161 et seq., 252 P 805.

Operation and Effect

Assessments for special city improvements which under this section the county treasurer is required to collect, held to fall within the meaning of the words "tax" and "taxes" as employed in section 5214, making it the duty of the county treasurer

References

Gagnon v. City of Butte, 75 M 279, 287, 243 P 1085; *State v. Jeffries*, 83 M 111, 114, 270 P 638; *School District No. 1 v. City of Helena*, 87 M 300, 307, 287 P 164; *State ex rel. Clark v. Bailey*, 99 M 484, 44 P 2d 740.

5251.1. City treasurer to collect special assessments, when. In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, such city or town treasurer shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him; and all of the provisions of section 5215 and 5215.1 of this code, shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When one payment becomes delinquent all payments shall, at the option of the city or town council, by appropriate resolutions duly adopted become delinquent, and the whole property shall be sold the same as other property is sold for taxes.

History: En. Sec. 5251, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929. See also history of Sec. 5251.

NOTE.—Section 5215 was repealed by Ch. 163, laws of 1935.

5251.2. City treasurer may collect special assessments, when. Any city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer, in accordance with the provisions of sections 5216 and 5215.1 may, nevertheless, provide by ordinance for the collection by its city or town treasurer of all special assessments and taxes levied and assessed in accordance with any of the provisions of this act in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by the county treasurer and all of the provisions of sections 5215 and 5215.1 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council, by appropriate resolution, duly adopted, become delinquent, and such delinquent special assessments shall be certified to the county clerk of the county in which such city or town is situated, and the county treasurer must collect such delinquent special assessments and taxes in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by

him, and in case the same are not paid, the whole property shall be sold, the same as other property is sold for taxes.

History: See history of Sec. 5251. This section en. Sec. 1, Ch. 78, L. 1929.

NOTE.—See note to section 5251.1.

5251.3. Special assessments, when payable. All special assessments, or installments of special assessments in cities and towns, duly and regularly levied by resolution, according to law, shall be payable on or before 6 o'clock p. m. on the 30th day of November of each year, and in event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for non-payment as are or may hereafter be provided by the laws of the state of Montana for other delinquent taxes.

History: See history of Sec. 5251. This section en. Sec. 1, Ch. 78, L. 1929.

5251.4. Delinquent assessments may be reinstated. When any special assessment, or installment, or installments of special assessments, have become delinquent, and are so declared by appropriate resolution by the city or town council, and have been certified to the county clerk and county treasurer for collection, as herein provided, the city or town council may, nevertheless, at its option, upon the payment to the city treasurer of the assessment, or the installment or installments of special assessments, and interest, up to date, by appropriate resolution, be withdrawn from the county treasurer, and cancelled from his records and proceedings, and reinstated in the office of the city treasurer and on the assessment book thereof. Said withdrawal and reinstatement may be had and made at any time before or after sale of the property for delinquent taxes, and before tax deed therefor has been executed, the certified copy of the resolution of the city or town council with reference to such payment, withdrawal and reinstatement filed with the county treasurer shall be authority to and for the county treasurer to cancel and withdraw said delinquent special assessments or any installments thereof.

History: See history of Sec. 5251. This section en. Sec. 1, Ch. 78, L. 1929.

5252. Correction of assessment—collection upon relevy of tax. Whenever, by reason of any alleged non-conformity to any law or ordinance, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances, and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto; and may reassess and relevy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provisions of any law or ordinance specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax, shall be taken to be subject to the qualifications of this act.

Any and every ordinance, or part thereof, of any council, heretofore passed in substantial conformity with this section, is hereby legalized.

History: En. Sec. 28, Ch. 89, L. 1913; re-en. Sec. 5252, R. C. M. 1921.

Operation and Effect

We think this section does not authorize the reassessment of any of the property in a special improvement district to make up for delinquent assessments against

other property. Its provisions have to do with the correction of invalid or erroneous assessment by reassessment. A reassessment cannot be made unless authorized by statute, and then only in the manner provided. *School District No. 1 v. City of Helena*, 87 M 300, 312, 287 P 164.

5253. Payment of tax under protest—action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest, to the city or county treasurer, as the case may be, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the city in whose behalf the same was collected, to recover such tax or any portion thereof, so paid under protest; provided, however, that any action instituted to recover any tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R. C. M. 1921.

Operation and Effect

Plaintiff, in an action to recover back a special improvement tax paid under protest, need not allege in the complaint that

his claim had been presented to the city or town council for allowance before action was commenced, this section not contemplating presentation thereof as a condition precedent to his right to maintain the action. *Harvey v. Town of Townsend et al.*, 57 M 407, 188 P 897.

5254. Mistake in name or description not fatal. Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R. C. M. 1921.

5255. Owner of property—definition of terms—publication of notice. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lot and lands, by deeds duly recorded in the county recorder's office in each county, or the person in possession of lands, lots, or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

The words "work," "improved," and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, and repairs, of all or any portion of said work.

The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act; also, the compensation of the persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

The notices, resolutions, orders, or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or in a semiweekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice," as used in this act, referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick, or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts, and places, which have been dedicated and accepted according to the law, or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

The term "city engineer," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, any person or

officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of the city engineer, and all provisions hereof applicable to the city engineer shall apply to such person so appointed.

The term "city council" is hereby declared to include any body or board which under the law is the legislative department of the government of the city.

In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the council or other chief executive officer of the municipality.

The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said council.

The term "quarter-block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R. C. M. 1921.

5256. Adjournment of hearing by council. Whenever, in proceedings hereunder, a time and place for hearing by the city council are fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power or jurisdiction of the city council in the premises shall not thereby be divested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act in as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913; re-en. Sec. 5256, R. C. M. 1921.

5257. Posting and publication of notices by clerk—effect of errors in proceedings. Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or deter-

mination hereunder, when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913; re-en. Sec. 5257, R. C. M. 1921.

Operation and Effect

Under this section any error in or departure from the mode of publication of any notice incident to the creation of a

special improvement district is insufficient to invalidate the proceedings, when it appears that the notice was actually published for the time required by the act. Aiken et al. v. City of Glendive et al., 60 M 1, 2, 197 P 1003.

5258. Curative section concerning special improvements. All special improvement districts which any city or town council in the state of Montana has created or attempted to create since March 14, 1913, pursuant to the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, the creation or attempted creation of which was irregular because of the failure of any such city or town council, so creating or attempting to create the same, to proceed in the creation of any such districts, or in giving notice thereof, in the manner required by chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and any and all bonds and warrants issued or to be issued to defray the cost and expense incurred, or to be incurred in the construction of the improvements made or to be made in any such districts, and the assessments levied or to be levied in any such districts, are hereby legalized and validated, and the acts and proceedings of the city or town council of any such city or town done or had with reference thereto are hereby made of as binding force and effect, as though they were done and had in strict conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; provided, however, that a resolution of intention to create, or a resolution creating or attempting to create any such district, was duly and properly passed and adopted by the city or town council of any such city or town, and approved by the mayor thereof, prior to giving notice thereof; and provided, further, that notice of the passage of such resolution of intention to create, or resolution creating or attempting to create any such district, or notice of the creation or intention to create or attempted creation of any such district, and of the time and place when and where the city or town council of any such city or town would hear and pass upon all protests made by any owner of property in any such district liable to be assessed for the work done or proposed to be done therein, against the making of such improvement, or the creation of any such district, and describing the general character of the improvements proposed to be made, the estimated cost thereof, and referring to the resolution on file in the office of the city or town clerk of any such city or town, for the description of the boundaries of any such district, was published for five days in a daily newspaper, or in some one issue of a weekly paper published in any such city or town, or in case no newspaper was published in any such city or town, at the time such notice was given, then, provided, it was posted for five days in three public places in such city or town; and provided, further, that a copy of such notice so published or posted was mailed to every person, firm, or corporation, or to the agent of every person, firm, or corporation, having

property within any such district, at his last known address, upon the same day such notice was first published or posted; and provided, further, that said notice was published or posted and mailed on a day not less than fifteen days prior to the date set for hearing and passing upon all protests made in any such district; and provided, further, that at the next regular meeting of the city or town council of any such city or town after the expiration of said fifteen days, the city or town council of any such city or town, proceeded to hear and pass upon, and did hear and pass upon all protests made in any such district; and provided, further, that no sufficient protests were made in any such district to prevent further proceedings therein, as provided in chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana for the letting of any contract for the construction of any improvements in any such district, and the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, for the issuance and delivery or sale of any bonds or warrants of any such district were or shall be duly and regularly passed, adopted, approved, given, done, and had in conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, and the laws of the state of Montana relating thereto; and provided, further, that the assessment to defray the cost of making the improvements in any such district was or shall be duly and regularly passed, adopted, and approved, and notice thereof duly and regularly given, and a copy of the resolution levying any such assessment, certified to by the city or town clerk, delivered to the city or town treasurer of any such city or town, within two days after its final passage, as required by the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the sum levied and assessed, or to be levied and assessed, against the property of any such district did not or shall not exceed the cost and expense of making the improvements therein; and provided, further, that the improvements made or to be made in any such district are improvements which a city or town can legally make under the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that nothing herein contained shall be deemed to affect or disturb rights acquired under any judicial decision made in any cause involving the procedure of any special improvement district created or attempted to be created under the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana.

History: En. Sec. 9, Ch. 142, L. 1915;
re-en. Sec. 5258, R. C. M. 1921.

Operation and Effect

NOTE.—The chapter above referred to is sections 5225 to 5257 of this code.

Defects in the proceedings necessary to confer jurisdiction upon the city council to create a special improvement district, such as in the passage of a resolution of

intention, giving notice of its passage, etc., are not cured by the provisions of this section. *Cooper v. City of Bozeman*, 54 M 277, 285, 169 P 801.

References

Cited or applied as section 9, chapter 142, laws of 1915, in *Hinzeman v. City of Deer Lodge*, 58 M 369, 374, 193 P 395.

5259. Special improvement districts for lighting streets—apportionment of cost. The city or town council of any city or town is authorized to create special improvement districts embracing any street or streets or public highway therein, or portions thereof, and property adjacent thereto, or property which may be declared by said council to be benefitted by the improvement to be made, for the purpose of lighting such street or streets or public highway, and to require not more than three-fourths ($\frac{3}{4}$) and not less than one-fourth ($\frac{1}{4}$) of the cost of installing and maintaining such lighting system to be paid by the owners of the property embraced within the boundaries of such districts, and to assess and collect such portion of such cost by special assessment against said property.

History: En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R. C. M. 1921; amd. Sec. 1, Ch. 143, L. 1927.

NOTE.—Chapter 98, laws of 1911, an act regulating the creation of lighting districts, was repealed by chapter 143, laws of 1915, which is here given.

References

Cited or applied as section 1, chapter 98, laws of 1911, in *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 34, 130 P 446; *School District No. 1 v. City of Helena*, 87 M 300, 308, 287 P 164.

5260. Apportionment of costs—assessments. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth ($\frac{1}{4}$) nor more than three-fourths, ($\frac{3}{4}$) as shall be determined by the city or town council, shall be borne by the property embraced within said district, and the city or town council for the purpose of making the assessment shall adopt one of the two (2) following methods:

(a) The city council shall assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district bordering

or abutting upon the street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the districts.

History: En. Sec. 2, Ch. 143, L. 1915;
re-en. Sec. 5260, R. C. M. 1921; amd. Sec.
2, Ch. 143, L. 1927.

References
School District No. 1 v. City of Helena,
87 M 300, 308, 287 P 164.

5261. Resolution of intention—notice—protest—hearings—installation of system. Before creating any special improvement lighting district in any such city or town, for the purpose of lighting any street or streets or public highway, or section thereof, in accordance with the provisions of this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof; also an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first (1st) year, and the proportion of such cost to be assessed against the property embraced within the district.

Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice of the passage of such resolution must be published for five (5) days in a daily newspaper or in some one issue of a weekly newspaper in the city or town, or in case no newspaper be published in such city or town, then by posting for five (5) days in three (3) public places in the city or town, and a copy of such notice shall be mailed to every person, firm or corporation having property within the proposed district, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement so proposed to be made and state the estimated cost thereof; also the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first (1st) year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district, and such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

At any time within fifteen (15) days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both. Such notice must be in writing and be delivered to the said clerk of the city council, who shall endorse thereon the date of its receipt by him.

At the next regular meeting of the city council, after the expiration of the time within which said protests may be so made, the city council

shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district, and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of six (6) months from the date when said protest was received by the said city clerk of said city council.

In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

When no protests have been delivered to the clerk of the city council within fifteen (15) days after the date of the first publication of the notice of the passage of the resolution of intention, or when a protest shall have been found by the city council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements; but before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

The city or town council may cause the posts, wires, pipes, conduits, lamps or other suitable and necessary appliances, for the purpose of lighting said streets, to be procured and erected by contract or by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide, and after such lighting system has been installed, may, by contract, in such way and manner as the council shall elect, cause the lights to be maintained thereon and electrical current furnished therefor; provided that the posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highways, or section thereof, to be lighted in any such district.

History: En. Sec. 3, Ch. 143, L. 1915;
re-en. Sec. 5261, R. C. M. 1921; amd. Sec.
3, Ch. 143, L. 1927.

References
School District No. 1 v. City of Helena,
87 M 300, 308, 287 P 164.

5262. Objections to irregular proceedings. At any time within sixty days from the date of the award of any contract by a city or town council under the provisions of this act, or at any time within sixty days from the date, the city or town council requires or instructs the street commissioner, or any other official of the city or town, to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or towns, to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular,

defective, erroneous or faulty, or that his property will be damaged by the making of any improvements in the manner contemplated, may file with the city clerk, who shall deliver the same to the city or town council, a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. All objections to any act or proceeding, or in relation to the making of said improvements not made in writing and in the manner at the time aforesaid, and all claims for damage therefor, shall be waived by such property owners; provided, the notice of the passage of the resolution of intention has been actually published, and the notices of improvements posted as provided in this act.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R. C. M. 1921.

5263. Bonds and warrants—interest—redemption. All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District No. Fund." Said warrants or bonds shall be in the denomination of one hundred dollars or fractions or multiples thereof; and may be issued in instalments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight years, and shall bear interest at the rate of six per cent. per annum from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921.

5264. Preparatory expense—accounts by engineer. The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, including the compensation of the city engineer for work done by him, and the cost of printing and advertising as provided in this act, and the preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R. C. M. 1921.

5265. Assessing cost of system—resolution—hearings—funds. It shall be the duty of the city or town council to ascertain the cost of installing such lighting system, and on or before the first Monday in October pass and finally adopt a resolution levying and assessing all of the property em-

braced within said district with not less than one-fourth ($\frac{1}{4}$) nor more than three-fourths ($\frac{3}{4}$) of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in section 5260 hereof. Any such resolution shall contain a list in which shall be described each lot or parcel of land, and either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite. Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first (1st) year, as determined by the city or town council, is on file in his office subject to inspection for a period of five (5) days, shall be published at least once in a newspaper published in the city. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the city or town council, and the time for such hearing shall not be less than five (5) days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections and for the purpose may adjourn from day to day, and may modify such resolution in whole or in part. A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within two (2) days after its passage to the city treasurer. All moneys derived from the collection of such assessments shall constitute a fund to be known as "Special Improvement Lighting District No. Fund."

History: En. Sec. 6, Ch. 143, L. 1915;
re-en. Sec. 5265, R. C. M. 1921; amd. Sec.
4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L.
1929.

References

School District No. 1 v. City of Helena,
87 M 300, 308, 287 P 164.

5266. Maintenance of system—assessment of costs. The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect; provided, however, that the city or town council shall not let a contract for a period to exceed three (3) years. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year, and the portion thereof to be assessed against the property embraced within the district, and before the first Monday in October pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be specially assessed against said property. Said resolution levying and assessing said portion of the cost of maintenance, and for furnishing electrical current therefor, shall be prepared and certified to in the same manner as the resolution provided for in the preceding section, and the same notice and hearing shall be given thereon, and shall be adopted and certified, and the assessment collected, in the same manner, as nearly as may be, as in the case of the resolution provided for in the preceding section. All moneys derived from the collection of the assessment provided for in such resolu-

tion shall be paid into a fund known as "Special Improvement Lighting District No. Maintenance Fund" and the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of electrical current for which the tax is levied, and such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district, and for no other purpose. Provided, however, that the city or town council shall have the power not more than once in a year to change by resolution the boundaries and number of any maintenance district. Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied, from and after the date of the final passage and adoption of the resolution levying the same; which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927.

5267. Effect of mistake as to ownership of property. When, under any of the provisions of this act, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R. C. M. 1921.

5268. Remedies for correction of errors. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this act for the correction of errors or omissions in the adoption of any resolution or proceeding, or in the levy of any assessment, or for the collection thereof, or for the enforcement of any such levy by sale of the property against which any assessment shall be made, or for the redemption of such property from such sale, or otherwise applicable to the administration of this act, shall be available in the administration hereof, the same to all intents and purposes as would be the case were such remedies, provisions, and means made a part hereof.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R. C. M. 1921.

5269. Procedure for discontinuance of system. If at any time after the creation of any special improvement lighting district a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths ($\frac{3}{4}$) of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor, in such district, be discontinued, the city or town council shall thereupon, by resolution, provide for discontinuing the maintenance and operation of the lighting system; provided, however, that if the city or town council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R. C. M. 1921; amd. Sec. 5, Ch. 143, L. 1927.

5270. Repealing and saving clauses. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that each and every special improvement lighting district created, or attempted to have been created, and each and every bond and warrant issued, and each and every assessment made and heretofore created under and by virtue of any of the acts of 1911 and 1913, shall not be invalidated, but the same are hereby validated, legalized, and approved.

History: En. Sec. 11, Ch. 143, L. 1915; re-en. Sec. 5270, R. C. M. 1921.

5271. Property of United States not liable for costs. Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement and the cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915;
re-en. Sec. 5271, R. C. M. 1921; amd. Sec. 6,
Ch. 143, L. 1927.

References
School District No. 1 v. City of Helena,
87 M 300, 308, 287 P 164.

5271.1. Improvements within sprinkling districts. Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues and alleys, within the sprinkling districts, so that the sprinkling and applying of water, oil, and salt or any other dust palliative or preventive will be of a durable and continuing benefit and the city or town council shall provide, by ordinance, a method, or methods, of doing said work and improvement.

History: En. Sec. 1, Ch. 12, Ex. L. 1933.

5271.2. Power to borrow money from United States—repayment. Cities and towns are authorized to enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by section 5271.1, and to provide for the repayment thereof by yearly payments from funds derived from such sprinkling districts created under section 5271.1, apportioned over a period of time not exceeding twenty (20) years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933.

5271.3. Maintenance of improvements. Cities and towns are authorized to maintain the work and improvements made under section 5271.1.

History: En. Sec. 3, Ch. 12, Ex. L. 1933.

5271.4. Power to assess costs against property. Cities and towns are authorized to assess the cost of such work, improvements and maintenance against the property in such sprinkling districts in the manner and as provided in section 5276, to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933.

5271.5. Notice of ordinance—publication—protests. At least fifteen (15) days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken. The city or

town clerk must give notice of the introduction of such proposed ordinance, and of the time it will be up for passage, by publication three (3) times in a daily newspaper, or a newspaper printed and published every day except Sunday, or in a weekly newspaper for two (2) successive issues, in such city or town, or, if there be no such newspaper, then by posting for at least ten (10) days in three (3) public places in each of the wards of said city or town. If forty per cent (40%) or more of the abutting property owners protest in writing to said city or town council against the passage of said proposed ordinance, then no further action shall be taken thereon and the same shall lapse.

History: En. Sec. 5, Ch. 12, Ex. L. 1933.

5272. Street sprinkling. Whenever the council of any city or town desires to sprinkle all or any part of the streets or avenues of its city or town with water, oil, salt, or any other dust palliative, as provided in this chapter, it shall provide, by ordinance, a method of doing said work, and of paying for the same under the following restrictions and regulations.

History: En. Sec. 24, p. 218, L. 1897;
re-en. Sec. 3390, Rev. C. 1907; re-en. Sec.
5272, R. C. M. 1921; amd. Sec. 1, Ch. 97,
L. 1927.

References
Cited or applied as section 3390, revised
codes, in *Stadler v. City of Helena*, 46 M
128, 135, 127 P 454; *Griffith v. City of*
Butte et al., 72 M 552, 234 P 829.

5273. Same—creation of districts. A resolution dividing the whole or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed; said resolution shall plainly define the boundaries of the several districts, or enumerate the streets, alleys, and public places, or any part thereof, constituting the different districts.

History: En. Sec. 25, p. 218, L. 1897;
re-en. Sec. 3391, Rev. C. 1907; re-en. Sec.
5273, R. C. M. 1921.

References
Griffith v. City of Butte et al., 72 M
552, 562, 234 P 829.

5274. Same—change of district. When once defined, sprinkling districts shall not be changed during the same calendar year, but may be changed by resolution the following year, or any year thereafter.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R. C. M. 1921.

5275. Assessment to pay for work. The sprinkling in districts so established may be done by contract, or by forces employed by the city or town, or by both, in such manner as the council may elect, and it shall be the duty of said council to estimate, as near as practicable, the cost of sprinkling in such districts so established for the season, and before the first Monday in November of each year they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than seventy-five per cent. of the entire cost of said work, exclusive of the cost of sprinkling parks and public places.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R. C. M. 1921.

5276. Same—method of assessment. The assessments for the cost and expense of sprinkling streets shall be made against all of the property embraced within each sprinkling district by one of the three following methods;

1. **Frontage Basis.** Each lot or parcel of land within such district, abutting upon some street upon which sprinkling is done, shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district.

2. **Area Basis.** Each lot or parcel of land within such district shall be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

3. **Combination of Frontage and Area Basis.** A portion of the total cost, to be assessed in each sprinkling district, may be assessed against the several lots or parcels of land within the district by Method No. 1 on a frontage basis, and the remainder of such cost by Method No. 2 on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R. C. M. 1921; amd. Sec. 2, Ch. 97, L. 1927.

5277. Same—method of levy of assessment. The resolution levying the assessment to defray the cost of sprinkling shall contain a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite; such resolution shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of five days, shall be published at least once in a newspaper published in a city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment, or any part thereof, and may adjourn from time to time, for that purpose, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such assessment shall be placed upon the tax-roll, and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R. C. M. 1921.

References

Cited or applied as section 3395, revised codes, in *Stadler v. City of Helena*, 46 M 128, 133, 135, 127 P 454.

5277.1. Special improvement district revolving fund. The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 24, L. 1929.

see Stanley v. Jeffries, 86 M 114, 123 et seq., 284 P 134.

Constitutionality

For discussion of the constitutionality,

5277.2. Transfers from general fund and tax levy for revolving fund.

For the purpose of providing funds for such revolving fund the city or town council

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds and warrants.

History: En. Sec. 2, Ch. 24, L. 1929.

5277.3. Loans from revolving fund for paying improvement district warrants—authorization by electors. Whenever any special improvement district bond or warrant, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine, shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require; provided, however, that the above provision of sections 5277.1, 5277.2, and 5277.3 of this code shall not apply to any district or districts heretofore created, unless and until, at an election, either the regular annual municipal election or a special election called by the council, a majority of the legal voters who shall be taxpaying freeholders of property situated in the city or town, shall authorize the city or town council to proceed thereunder, such election to be called and conducted in the manner and under such regulations as the council may provide. At such election no person other than such qualified elector and free-holder shall vote on said question, and a majority of those voting thereat shall be sufficient to determine, and shall determine, the question whether the council be authorized or not to proceed under sections 5277.1, 5277.2 and 5277.3 of this code.

History: En. Sec. 3, Ch. 24, L. 1929.

Unconstitutional in Part

Held, that chapter 24, laws of 1929, in

so far as it authorizes cities to assume liabilities for losses suffered by holders of special improvement bonds and warrants

issued prior to the passage of the act, amounts to a reimbursement of the holders of such losses is violative of section 11, article XII, of the constitution, prohibit-

ing taxation for other than a public purpose, and therefore invalid in that regard. Stanley v. Jeffries, 86 M 114, 123 et seq., 284 P 134.

5277.4. Lien for loans from revolving fund—surplus district funds transferred to revolving fund. Whenever any loan is made to any special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929.

5277.5. Use of excess moneys in revolving fund. Whenever there is in the revolving fund an amount in excess of the amount which the council deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may

(1) by vote of all of its members at a meeting called for that purpose, order such excess or any part thereof transferred to the general fund of such city or town, or

(2) use such excess or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

The council may sell any tax certificates issued on any such sale or sales. After acquiring title to such property, the city or town may lease such property, or sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require. All proceeds from such sales of tax certificates, and from such leasing, sale, or other disposition of the property, shall belong to and be paid into the revolving fund, and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose, as hereinbefore provided.

History: En. Sec. 5, Ch. 24, L. 1929.

5278. Repealed—Chapter 160, laws of 1931.

CHAPTER 399

MUNICIPAL BONDS AND INDEBTEDNESS

Section	5278.1.	Creation of indebtedness—submission to taxpayers.
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5278.1. Creation of indebtedness—submission to taxpayers. Whenever the council of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds for any purpose whatever, under its powers as set forth in section 5039.63, or amendments thereto, the question of issuing such bonds shall first be submitted to the qualified electors of such city or town in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing funding or refunding bonds to fund or refund warrants or bonds issued prior to and outstanding on the first day of July, 1931, or to fund or refund warrants or bonds issued prior to and outstanding on the first day of July, 1933. In order to issue bonds to fund or refund warrants or bonds issued prior to and outstanding on July 1, 1931, or to fund or refund warrants or bonds issued prior to and outstanding on July 1, 1933, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be funded or refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933.

5278.2. Single purpose. Acquiring land for a site for a public building, or for any other public use, and constructing, erecting or acquiring

by purchase any building thereon and furnishing and equipping the same shall be deemed a single purpose; the acquiring of rights-of-way for street, or other purposes, making improvements thereon, or constructing sewers or water pipe lines, shall be deemed a single purpose; the procuring of a water supply and the construction or acquiring of a water system, and improving the same, if necessary, shall be deemed a single purpose.

History: En. Sec. 2, Ch. 160, L. 1931.

5278.3. Limitation on amount of indebtedness. No city or town shall issue bonds for any purpose in an amount which, with all outstanding and unpaid indebtedness, will exceed three per centum (3%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system, or procuring a water supply or constructing or acquiring a water system for a city or town, which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, including all indebtedness theretofore contracted, which is unpaid or outstanding, shall not exceed ten per centum (10%) over and above the three per centum (3%) heretofore referred to, of the total value of the taxable property therein as ascertained by the last assessment for state and county taxes. The words "value of the taxable property" as used in this section, are used in the same sense as in section 6 of article XIII of the constitution and shall be given the same meaning; and provided further, that the issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds shall not be deemed the incurring of a new or additional indebtedness, but shall be deemed merely the changing of the evidence of outstanding indebtedness.

History: En. Sec. 3, Ch. 160, L. 1931.

5278.4. Terms of bonds—rate of interest. No bonds for any purpose shall be issued for a longer term than twenty years, and when bonds are issued for the purpose of funding warrants or refunding bonds heretofore issued, as authorized by section 5278.1, such bonds shall not be issued for a longer term than twenty years. All bonds issued for a longer term than five years may be redeemable at the option of the city or town at any time before maturity when so recited in the bonds. The maximum rate of interest which any bonds may bear shall be six per centum and shall be payable semi-annually.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933.

5278.5. Form of bonds. All bonds hereafter issued by any city or town shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds", as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part pay-

ment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bond", as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at one hundred dollars (\$100.00), or some multiple thereof.

History: En. Sec. 5, Ch. 160, L. 1931.

5278.6. Petition for election—form—proof. No bonds shall be issued by a city or town for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July 1, 1931, as authorized in section 5278.1, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided, and no such election shall be called unless there has been presented to the city or town council a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same

and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

(2) Which, and how many of the persons whose names are subscribed to such petition, are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

History: En. Sec. 6, Ch. 160, L. 1931.

5278.7. Consideration of petition—calling election. When such petition has been filed with the city or town clerk and he has found it has a sufficient number of signers qualified to sign the same, he shall place the same before the city or town council at its first meeting held after he has attached his certificate thereto. The council shall thereupon examine such petition and make such other investigation as it may deem necessary.

If it is found the petition is in proper form, bears the requisite number of signatures of qualified petitioners, and is in all other respects sufficient, the council shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its filing and presentation, the purpose or purposes for which the bonds are proposed to be issued, and fix the exact amount of bonds to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition, determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in section 5278.3, and making provision for having such question submitted to the qualified electors of the city or town at the next general city or town election, or at a special election which the council may call for such purpose.

History: En. Sec. 7, Ch. 160, L. 1931.

5278.8. Notice of election—election hours—election officers. Whether such election is held at the general city or town election, or at a special election, separate notice shall be given thereof. Such notice shall state the date when such election will be held, the hours between which the polls will be open, the amount of bonds proposed to be issued, the purpose thereof, the term of years through which the bonds will be paid, and such other information regarding the election and the proposed bonds as the board may deem proper. If the bonds proposed to be issued are for two (2) or more purposes, each purpose and the amount thereof must be separately stated. Such notice shall be posted in each voting precinct in the city or town at least ten (10) days prior to the date for holding such election, and must also be published once a week for a period of not less than two (2) consecutive weeks immediately preceding the date for holding such election in some newspaper published in the city or town, if there be one, and if not then in a newspaper published in the state at a

point in the state nearest to the city or town, and designated by the city or town council.

If the question of issuing bonds is submitted at a special election called for such purpose, the city or town council shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of judges than is required at a general city or town election, but in no case shall there be less than three (3) judges in a precinct and such judges shall act as their own clerks.

If the question of issuing bonds is submitted at a general city or town election, the polls shall be kept open during the same hours as are fixed for the general election and the judges and clerks for such general election shall act as the judges and clerks thereof.

History: En. Sec. 8, Ch. 160, L. 1931.

5278.9. Form of ballots and conduct of election. Whenever the question of issuing bonds is submitted at either a general city or town election, or at a special election, separate ballots shall be provided therefor. Such ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink, in one (1) line or more, as required, the word "FOR" (stating the proposition and the terms thereof explicitly and at length), and thereunder the word "AGAINST" (stating the proposition and terms in like manner as above); and there shall be before the word "FOR" and before the word "AGAINST", each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in the following manner:

☐

FOR (stating the proposition)

☐

AGAINST (stating the proposition)

If bonds are sought to be issued for two (2) or more separate purposes, then separate ballots must be provided for each purpose or proposition.

The election shall be conducted, and the returns made, in the same manner as other city or town elections; and all election laws governing city and town elections shall govern, in so far as they are applicable, but if such question be submitted at a general city or town election the votes thereon must be counted separately and separate returns must be made by the judges and clerks at such election. Returns must be made separately for each proposition or question submitted at such election.

History: En. Sec. 9, Ch. 160, L. 1931.

5278.10. Who are entitled to vote—registration of electors. Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Such registered and qualified electors may be determined from the registration books and assess-

ment rolls of the county, and lists thereof and poll-books for such election prepared and furnished in the manner provided by sections 5199.1 and 5199.2; provided, however, that the city or town council, in lieu thereof, may provide by ordinance for the registration of the electors of the city or town entitled to vote at any such election, but no person shall be entitled to register or vote at such election who is not a qualified elector and taxpayer as hereinbefore set forth.

History: En. Sec. 10, Ch. 160, L. 1931.

5278.11. Percentage of voters required to authorize the issuing of bonds. Wherever the question of issuing bonds for any purpose is submitted to the qualified electors of a city or town, at either a general or special election, not less than forty per centum (40%) of the qualified electors entitled to vote on such proposition or question must vote thereon, otherwise such proposition shall be deemed to have been rejected; provided, however, that if forty per centum (40%) or more of such qualified electors do vote on such proposition or question at such election, and a majority of such votes shall be cast in favor of such question or proposition, then such proposition or question shall be deemed to have been adopted and approved.

History: En. Sec. 11, Ch. 160, L. 1931.

5278.12. Canvass of election returns—resolution for bond issue. If the bonding election is held at the same time as a general city or town election, then the returns shall be canvassed by the city or town council at the same time as the returns from such general election; but if the question of issuing bonds is submitted at a special election then the city or town council shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more of the qualified electors of the city or town entitled to vote at such question or proposition voted thereon, and that a majority of such votes were cast in favor of the issuing of such bonds, the city or town council shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, and that any thereof may be redeemed in full, at the option of the city or town, on any interest payment date from and after ten (10) years from the date of issue; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two (2) or more series or installments.

History: En. Sec. 12, Ch. 160, L. 1931.

5278.13. Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the

amount proposed to be issued for each purpose and shall be substantially in the form following:

NOTICE OF SALE OF (CITY OR TOWN) BONDS.

Notice is hereby given by the council of the (City or Town) of _____, Montana, that the said council will, on the _____ day of _____, 19____, at the hour of _____ o'clock _____ M., at its council chamber in the (City or Town) of _____, Montana, sell to the highest and best bidder for cash, either amortization or serial bonds of the said (City or Town) in the total amount of _____ dollars, (\$ _____), for the purpose of _____.

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued the entire issue may be put into one (1) single bond or divided into several bonds, as the council may determine upon at the time of sale, both principal and interest to be payable in semi-annual installments during a period of _____ years from the date of issue.

If serial bonds are issued and sold they will be in the amount of _____ dollars (\$ _____), each, except the last bond which will be in the amount of _____ dollars (\$ _____); the sum of _____ dollars (\$ _____) of said serial bonds will become due and payable on the _____ day of _____, 19____, and a like amount on the same day each year thereafter until all such bonds are paid, except that the last installment will be in the amount of _____ dollars (\$ _____).

The said bonds, whether amortization or serial bonds, will bear date of _____, 19____, will bear interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, on the _____ day of _____ and on the _____ day of _____, in each year, and will be redeemable (Here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners of the state of Montana must be accompanied by a certified check in the sum of _____ dollars, payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of _____, and delivered to the clerk of said (city or town).

Mayor of the (city or town) of _____, Montana.

ATTEST:

(City or Town) Clerk.

History: En. Sec. 13, Ch. 160, L. 1931.

5278.14. Publication of notice of sale. The city or town council shall cause such notice to be published once each week for four (4) successive weeks immediately preceding the date of sale, in a newspaper of general circulation printed and published, if there be one, and if not then in a newspaper of general circulation, in said city or town, printed and published in the county in which said city or town is located; and the council may, in its discretion, cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council will be most likely to give notice of such sale to prospective bidders. The city or town clerk must, at least fifteen (15) days before the date fixed for the sale of such bonds, send a copy of such published notice to the secretary of the state board of land commissioners, and shall thereupon furnish to the said secretary a transcript of the proceedings had for the issuance of bonds, and such other information relating thereto as the secretary may find necessary.

History: En. Sec. 14, Ch. 160, L. 1931.

5278.15. Sale of bonds. The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town, and the council shall accept the bid they shall judge most advantageous to the city or town; provided, that no bid shall be accepted which will require the bonds to bear a rate of interest exceeding six per centum (6%) per annum. No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any and all bids and to sell the bonds at private sale if they deem it for the best interests of the city or town, provided, however, that such bonds shall not bear a greater rate of interest than six per centum (6%) per annum and shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 15, Ch. 160, L. 1931.

Operation and Effect

Under this section, authorizing the city council to reject all bids for municipal bonds and to sell them at private sale when it deems it best for the interests of the city, a city may contract to exchange

such bonds at their face value for work incident to the construction of a water system at an agreed valuation, the price of the work being determined by a bid which is accepted, such an arrangement being tantamount to a "sale" of the bonds. *Commonwealth Public S. Co. v. Deer Lodge*, 96 M 48, 65, 29 P 2d 667.

5278.16. Form and execution of bonds. At the time of the sale of the bonds, or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds, whether amortization or serial bonds, and of the coupons to be attached thereto. Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town, by the treasurer thereof, and must be attested by the city or town clerk, and

each bond shall have the city or town seal affixed thereto; provided, however, that lithographic or engraved facsimiles of the signatures of the mayor, treasurer and clerk of the city or town may be affixed to the coupons, in place of their signatures, when such fact is so recited in the bond.

History: En. Sec. 16, Ch. 160, L. 1931.

5278.17. Printing of the bonds. Under the direction of the council, the city or town clerk shall cause the bonds, with coupons attached thereto, to be printed or lithographed, at the expense of the city or town at lowest commercial rates; provided, however, that a purchaser of such bonds may furnish the same to the city or town, in the form prescribed by the council, for execution, if the same is done at his own expense and without cost or expense to the city or town.

History: En. Sec. 17, Ch. 160, L. 1931.

5278.18. Registration of bonds—copy to be preserved. When duly executed by the officers of the city or town, as herein provided, the bonds shall be registered by the city or town treasurer in a book provided for that purpose before being delivered to the purchaser. Such registration shall show the number and amount of each bond, the date of issue, date redeemable and date when the same will become due, the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be made and the name and address of the purchaser. The city or town clerk shall also deliver to the city or town treasurer an unsigned and cancelled printed copy of one of the bonds, as so issued and registered, to be preserved in his office.

History: En. Sec. 18, Ch. 160, L. 1931.

5278.19. Delivery of bonds—payment for same—use of proceeds. In case the state board of land commissioners is the purchaser of the bonds, the city or town treasurer shall forward the registered bonds to the secretary of the board who shall cause the same to be delivered to the state treasurer and payment therefor shall be made in the manner provided by law. In case the bonds are purchased by other investors the city or town treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of such bonds shall be paid to the city or town treasurer and shall be immediately available for the purpose or purposes for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931.

5278.20. Liability on bonds. All bonds issued under the provisions of this act shall be legal and valid obligations of the city or town issuing the same and the full faith and credit of such city or town are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 20, Ch. 160, L. 1931.

5278.21. Treasurer's certificate as to principal and interest. Whenever any city or town has any issue or series of bonds outstanding and there is not sufficient funds on hand available for the payment of the full amount

of the interest and principal thereof, the city or town treasurer shall, between the first and fifteenth days of July, in each year, while such bonds or any of them remain outstanding, and unpaid, make out and deliver to the city or town clerk, to be by him presented to the city or town council at their next meeting, a statement showing the amount required to be raised by tax levy during the then current fiscal year, for payment of interest and principal becoming due and payable during such fiscal year, or within ninety days thereafter, on each issue or series of bonds outstanding, or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time, and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in section 5278.20.

History: En. Sec. 21, Ch. 160, L. 1931.

5278.22. Tax. The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax, upon all taxable property in the city or town, for the payment of interest on the principal of each series or issue of bonds outstanding, and the tax levy for any one series or issue of bonds must be entirely separate and distinct from such levy for any other issue or series of bonds. The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of such bonds as will become due and payable during the then current fiscal year, or within ninety days thereafter, as such amount is shown by the treasurer's statement provided for by section 5278.21; and if no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within ninety days thereafter, and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal thereof when the same become due, an amount not less than a sum produced by dividing the whole amount for which such series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by section 5278.21.

History: En. Sec. 22, Ch. 160, L. 1931.

5278.23. Liability of members of council. If the council of any city or town shall fail, neglect or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds, as required by the provisions of section 5278.22, the holder of any bond of such issue or series, or any taxpayer paying taxes on property situated in such city or town, may apply to the district court of the county, in which the city or town issuing such bonds is situated, for a writ of mandate to compel the city or town council to make a proper and sufficient levy for such purposes, and if, upon the hearing of such application it shall appear to the satisfaction of the court that the city or town council has failed, neglected

or refused to make any levy whatever for such purposes, or has made a levy, but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of section 5278.22, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such city or town council, at the next meeting thereof for the purpose of making and fixing city or town levies, to make and fix a tax levy against all taxable property in such city or town sufficient to raise the amount of such deficiency, which levy shall be in addition to the levy required to be made for the then current fiscal year; provided, that any costs which may be allowed or awarded the petition in any such proceeding shall be paid by the members of the city or town council and shall not be a charge against the city or town.

History: En. Sec. 23, Ch. 160, L. 1931.

5278.24. Bond funds. The city or town treasurer shall keep in his books a special and separate sinking and interest fund account for each issue or series of bonds issued by his city or town, and outstanding, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than payment of the principal and interest on such bonds so long as any of such bonds remain outstanding. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount, and all amounts subsequently collected for such fund, shall be transferred to the general fund of the city or town or to the sinking and interest fund of any other issue or series of bonds outstanding, that the city or town council may designate.

History: En. Sec. 24, Ch. 160, L. 1931.

5278.25. Payment of principal and interest. The city or town treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where such bonds are payable, upon presentation and surrender of the coupon or coupons, bond or bonds to be paid; provided, however, that if the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons, or bonds, and return the same to the city or town treasurer together with his receipt therefor.

Any and all installments of interest or principal of bonds issued under the provisions of this act, not promptly paid when due, shall draw interest at the rate of six per centum (6%) per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 25, Ch. 160, L. 1931.

5278.26. Redemption of bonds before maturity. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more

of the outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are held by the state of Montana, the city or town treasurer must apply such available money in payment of as many of such bonds as the same will pay. Not less than fifteen (15) days before the next interest payment date the city or town treasurer must give notice to the state board of land commissioners that on such interest payment date such bond or bonds will be paid, and the city or town treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon. Upon receipt of such amount the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto, and return the same, with his receipt, to the city or town treasurer.

Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding optional bonds of the issue or series to which such sinking and interest fund belongs, and which bonds are not yet due but are then redeemable, or will become redeemable on the next interest payment date, and such bonds are not held by the state of Montana, the city or town treasurer must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem. The city or town treasurer must give notice to the holder of such bond or bonds, if known to him, or to any bank or financial institution at which such bonds are payable, at least fifteen (15) days before the next interest payment date, that such bonds will be redeemed and paid on such date. The city or town treasurer must also publish in some newspaper of general circulation printed and published in the city or town, and if there be none, then in some newspaper of general circulation in such city or town, printed and published in the county in which such city or town is situated, once a week for two successive weeks immediately preceding such interest payment date, a notice that such bond or bonds have been called in for redemption and will be paid in full on such interest payment date. If such bonds are payable at some bank or financial institution the city or town treasurer must remit to such bank or institution, before such interest payment date, an amount sufficient to pay and redeem such bonds. If such bonds are not presented for redemption and payment on such interest payment date interest thereon shall cease on such date.

All bonds paid and redeemed under the provisions of this section must be paid and redeemed in the numerical order in which the same were issued.

History: En. Sec. 26, Ch. 160, L. 1931.

5278.27. Investment of sinking and interest fund. Whenever there is available money in any sinking or interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking fund belongs, and such bonds are not held by the state of Montana, and are not subject to redemption, the city or town treasurer, at the direction of the city or town council, shall purchase such bond or bonds of such issue or series, if this

can be done at not more than par and accrued interest, or at such reasonable premium as the council may feel justified in paying, not in any case exceeding five per centum (5%).

If the council cannot purchase any of the outstanding bonds at such reasonable price, then such available money in such sinking and interest fund shall be invested by the city or town treasurer, under the direction of the city or town council, in other bonds of the city or town, in warrants of the city or town, in warrants issued by any county of this state, in bonds or warrants of this state, or in bonds or treasury certificates of the United states; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least thirty (30) days before the date when the bonds of the city or town of such series will become redeemable.

History: En. Sec. 27, Ch. 160, L. 1931.

5278.28. Cancellation of bonds, coupons and warrants. All bonds and interest coupons paid by the city or town treasurer from time to time shall be cancelled by him, and he shall enter on the records of the registration of such bonds the date of the payment of the same and the several coupons attached thereto, and he shall deliver the same, after such cancellation, to the city or town clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon, and the city or town clerk shall exhibit such bonds and coupons, with such report, to the city or town council at the next regular meeting thereof.

Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds it shall be the duty of the city or town treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds so refunded or funded, and he shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the city or town clerk, with a report showing the numbers thereof and the amounts paid for principal and interest, and the city or town clerk shall exhibit such warrants or bonds, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931.

5278.29. Exchange of bonds for amortization bonds. Subject to the approval of the state board of land commissioners the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state of Montana and which were not issued either as amortization or serial bonds, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 5278.5, and shall bear interest at such rate as may be agreed upon between the council of such city or town and the state board of land commissioners, but which shall not exceed six per centum (6%) per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to

deprive city or town councils of the rights to advertise, sell and issue re-funding bonds in the manner provided in this act.

History: En. Sec. 29, Ch. 160, L. 1931.

5278.30. Application of this act to outstanding bonds. All of the provisions of this act with reference to the payment of principal and interest of bonds, redemption and payment thereof, investment of sinking and interest funds, levy of taxes for payment of principal and interest, maintenance of separate sinking and interest funds, and all other provisions of this act which can be made applicable thereto, shall apply to all bonds heretofore lawfully issued by any city or town under any law or laws of this state, and which bonds shall be outstanding at the time this act takes effect, providing, however, that this act shall not in any manner be held to apply to bonds or warrants heretofore issued under the laws of Montana providing for special improvement district bonds of cities and towns in the state of Montana, and particularly under the provisions of sections 5225 through 5277.

History: En. Sec. 30, Ch. 160, L. 1931.

5279-5288. Repealed—Chapter 160, laws of 1931.

CHAPTER 400

ABATEMENT OF SMOKE NUISANCE

Section	5289.	Injurious smoke may be abated.
	5290.	Petition for abatement.
	5291.	Contract for abatement.
	5292.	Bonds.
	5293.	Election.
	5294.	Notice of election.
	5295.	Character of bonds.
	5296.	Sale of bonds.
	5297.	Payment of bonds.
	5298.	Modification of contract.
	5299.	Provisions concerning election.

5289. Injurious smoke may be abated. It shall be lawful for any county or incorporated city or town in any county in this state, where injurious and unhealthy smoke and fumes exist, to make contracts for the abatement thereof, and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided.

History: En. Sec. 1, p. 142, L. 1893; re-en. Sec. 4831, Pol. C. 1895; re-en. Sec. 3430, Rev. C. 1907; re-en. Sec. 5289, R. C. M. 1921.

5290. Petition for abatement. Wherever a petition is presented to the board of county commissioners of any county, or to the council of any incorporated city or town, signed by at least one hundred of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this act, it shall be the duty of the board of county commissioners of such county or council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes, or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done. Such contract shall be entered into and made with such person

or persons, corporation or corporations, and contain such provisions and conditions as will, in the opinion of the board of county commissioners or council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid, and shall take effect and be in force as provided in this act.

History: En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R. C. M. 1921.

5291. Contract for abatement. Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law, and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination, and the person or persons, corporation or corporations, with whom said contract shall have been made, shall execute their or its bond or bonds with sufficient sureties to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part, the terms, conditions, and penalty of which shall be approved by the contracting board or council, which said bond or bonds shall be in full force and effect upon the ratification thereof as hereinafter provided, the condition of which shall be expressed therein.

History: En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R. C. M. 1921.

5292. Bonds. For the purpose of raising moneys to meet the payments under the terms and conditions of said contract, and other necessary and proper expenses in and about the same, and the approval or disapproval thereof, it shall be the duty of the board of county commissioners, if the petition be presented to it within thirty days thereafter, to ascertain the existing indebtedness of the county in the aggregate, and within sixty days after ascertaining the same to submit to the electors of such county the proposition to approve or disapprove the said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed five per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring said indebtedness; and if said petition be presented to the council of any incorporated city or town, then within thirty days thereafter they shall ascertain the aggregate indebtedness of such city or town, and, within sixty days after ascertaining the same, submit to the electors of such city or town the proposition to approve or disapprove said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed three per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner hereinbefore provided, and if disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R. C. M. 1921.

5293. Election. The vote upon such proposition shall be had at an election for that purpose to be held, conducted, counted, and results ascer-

tained and determined in the manner and by the same officers provided by law for general elections, except as otherwise herein provided, and the proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds," "Against the contract and bonds," the former above the latter, and the elector shall indicate his vote by a cross opposite the one or the other for which he votes; and if it appears from the result of such election that a majority of the votes cast were "For the contract and bonds," then said contract shall be in full force and effect, and the said bonds shall be issued and disposed of in the manner hereinafter provided. If it shall appear from the result of such election that there was a tie, or a majority of said votes were cast "Against the contract and bonds," then the said contract and bond given for its fulfilment shall be null and void and of no effect, and said bonds and none thereof shall be issued.

History: En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R. C. M. 1921.

5294. Notice of election. The board of county commissioners of the county in which such election is to be held, or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating the objects thereof, the time and place of holding the same, such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them, the amount of bonds proposed to be issued, when payable, and the interest they are to bear, with a description of the tickets or ballots to be used, in some newspaper printed and published and circulated in the county, or city, or town, as the case may be, in which such election shall be held, at least three times a week for at least six consecutive weeks next preceding such election, and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: En. Sec. 6, p. 144, L. 1893; re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. 3435, Rev. C. 1907; re-en. Sec. 5294, R. C. M. 1921.

5295. Character of bonds. The bonds to be issued upon the conditions and under the provisions aforesaid shall bear the date of their issuance; shall be designated as sanitary coupon bonds of the county, city, or town issuing the same; shall be of a denomination not less than five hundred nor more than one thousand dollars each; shall be payable at such place in New York City or elsewhere at the discretion of the board or council issuing the same; shall bear interest at the rate of six per cent. per annum, payable thirty years after the date thereof, with the privilege of paying the same at any time after five years from such date, which interest shall be payable semi-annually at the place whereat the principal is payable, and for which interest coupons shall be attached to said bonds. If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof, and his seal thereto attached; and if issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk, and the seal thereof attached.

History: En. Sec. 7, p. 145, L. 1893; re-en. Sec. 4837, Pol. C. 1895; re-en. Sec. 3436, Rev. C. 1907; re-en. Sec. 5295, R. C. M. 1921.

5296. Sale of bonds. The board of county commissioners or council, as the case may be, may provide by said contract for the delivery of said bonds, or any part thereof, at their face value, upon the terms and conditions in said contract provided, or may sell and dispose of the same, or any part thereof, to raise funds to carry out said contract, and use such funds for that purpose, and for the payment of any expert or experts, or any incidental expenses proper and necessary in and about said contract, and the carrying out of the same. And in the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation, which may be printed and published in each county in the state, and also by publication in at least three newspapers of general circulation, printed and published in the cities of Boston and New York. Such notice shall be published at least once a week, and shall contain, in substance, a description of said bonds, as set out in the preceding section of this act, and the proceeds of the sales thereof shall be paid over to the county treasurer or the city or town treasurer, as the case may be, and kept as a separate and independent fund for the purposes herein provided, and shall be known as the sanitary coupon bond fund, and shall be deposited and kept in such a manner, and at such bank or banks, as the board of county commissioners of the county or council of the city or town, owning such funds, may direct, and which shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R. C. M. 1921.

5297. Payment of bonds. The faith of the county or incorporated city or town issuing bonds under the provisions of this act is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same, and the board of county commissioners of the county or council of the incorporated city or town, issuing said bonds, shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, and form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall become a lien and be collected as other taxes, and shall be kept as a separate fund, as hereinbefore provided, and all bonds, coupons, orders, and warrants issued and drawn under the provisions of this act shall be promptly paid, registered, and entered in books kept for that purpose, and correct and proper entries made in respect thereto, and the same when paid shall be canceled and preserved, and proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: En. Sec. 9, p. 146, L. 1893; re-en. Sec. 4839, Pol. C. 1895; re-en. Sec. 3438, Rev. C. 1907; re-en. Sec. 5297, R. C. M. 1921.

5298. Modification of contract. In the event it shall be found expedient and proper in executing said contract to modify or change the same

in some of the minute details thereof, and such modifications or change shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county, or the judge or judges of the district in which such county or incorporated city or town is included, and, when so approved, shall have the same force and effect as if originally contained therein.

History: En. Sec. 10, p. 146, L. 1893; re-en. Sec. 4840, Pol. C. 1895; re-en. Sec. 3439, Rev. C. 1907; re-en. Sec. 5298, R. C. M. 1921.

5299. Provisions concerning election. No registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control as if especially had and done for the purposes of the election to be held under this act.

History: En. Sec. 11, p. 146, L. 1893; re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. 3440, Rev. C. 1907; re-en. Sec. 5299, R. C. M. 1921.

CHAPTER 401

DAMAGE CAUSED BY CHANGE OF GRADE

Section 5300. Damages must be paid on change of grade.

5301. Appraisement of damages.

5302. Time for report to be made.

5303. Appeals and proceedings thereunder.

5304. Issues made.

5305. Costs—how taxed.

5300. Damages must be paid on change of grade. When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town, and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid, as is hereinafter provided.

History: En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907; re-en. Sec. 5300, R. C. M. 1921.

Operation and Effect

After the grade of a street has once been established, the city, under sections 5039.67 and this section, may not change it until the damages to abutting property have been determined and tendered to the

owner. *State v. Northern Pac. Ry. Co.*, 88 M 529, 295 P 257.

Id. Before a city may exercise the power conferred by amended section 5039.11 to order the construction of a subway street crossing necessitating a change in the grade of the street, it must comply with the provisions of section 5039.67, and this section, they being limitations upon the exercise of its police power in that behalf.

5301. Appraisement of damages. In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages. The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town, to be immediately filed in his office, and the other to the owner of the building.

History: En. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907; re-en. Sec. 5301, R. C. M. 1921.

Operation and Effect

When all the circumstances detailed in the next preceding section exist, the pow-

er of the city to appoint a board of appraisers and clothe it with any authority is made further to depend upon the inability of the city and owner to agree, which, of course, implies effort, and before the

appointment is made, it should appear that they were in fact unable to agree. State ex rel. City of Butte v. District Court, 48 M 614, 617, 139 P 791.

5302. Time for report to be made. Such report must be made and delivered within ten days after the appointment of the appraisers.

History: En. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907; re-en. Sec. 5302, R. C. M. 1921.

5303. Appeals and proceedings thereunder. Within twenty days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court, within the county in which such city or town is located, a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report, whereupon the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff, and the owner of the building as defendant, and the question of the amount of damages may be tried by a jury or the court.

History: En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907; re-en. Sec. 5303, R. C. M. 1921.

5304. Issues made. The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: En. Sec. 4944, Pol. C. 1895; re-en. Sec. 3445, Rev. C. 1907; re-en. Sec. 5304, R. C. M. 1921.

5305. Costs—how taxed. In case the owner of the building appeals and the damages are not increased, or in case the city or town appeals, and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases, or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907; re-en. Sec. 5305, R. C. M. 1921.

References

Cited or applied as section 3446, revised codes, in State ex rel. City of Butte v. District Court, 48 M 614, 616, 139 P 791.

CHAPTER 402

BUILDING REGULATION IN CITIES AND TOWNS

- Section 5305.1. Building restrictions by towns authorized.
 5305.2. Districts for effecting building restrictions.
 5305.3. Purposes of act.
 5305.4. Method of procedure.
 5305.5. Changes.
 5305.6. Zoning commission.
 5305.7. Board of adjustment.
 5305.8. Enforcement and remedies.
 5305.9. Conflict with other laws.

5305.1. Building restrictions by towns authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council, or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage

of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929.

Constitutionality

Held, that this act, authorizing the creation of zoning ordinances in cities and towns and the appointment of a board of adjustment, as well as such an ordinance involved in the case at bar, are free from constitutional objections. *Freeman v. Board of Adjustment et al.*, 97 M 342, 347 et seq., 34 P 2d 534.

State May Delegate Police Power to Municipality

The state, in which the police power is lodged, may by act of the legislature delegate such power to a municipality for the purpose of enacting zoning ordinances, as it did in this state by enacting chapter 136, laws of 1929. *Freeman v. Board of Adjustment et al.*, 97 M 342, 347 et seq., 34 P 2d 534.

5305.2. Districts for effecting building restrictions. For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

History: En. Sec. 2, Ch. 136, L. 1929.

5305.3. Purposes of act. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: En. Sec. 3, Ch. 136, L. 1929.

5305.4. Method of procedure. The city or town council, or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

History: En. Sec. 4, Ch. 136, L. 1929.

5305.5. Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots

included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929.

5305.6. Zoning commission. In order to avail itself of the powers conferred by this act, the city or town council or other legislative body, shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929.

5305.7. Board of adjustment. Such city or town council or other legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

The board of adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within

which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929.

Powers of Board of Adjustment Broad, General and Discretionary

Contention that the powers of the board of adjustment (or appeal) created by this act, authorizing the enactment of zoning ordinances in cities and towns, are limited to slight variations, such as the height of a building, the distance it must be from the street, etc., held not meritorious, but that on the contrary the board, an administrative body vested with general power to act as a fact-finding body and determine whether in any specific case unusual hardship might result from an enforcement of the strict letter of the ordinance, possesses broad and general powers with a considerable latitude for the exercise of the discretion, the conferring of which powers does not constitute an unlawful delegation of legislative authority. *Freeman v. Board of Adjustment et al.*, 97 M 342, 368, 34 P 2d 534.

Id. Prior to the enactment of a city zoning ordinance a grocery store had been conducted for several years in a rented building later incorporated in a residential district under the ordinance; after its enactment the storekeeper purchased a lot in the same block and but a short distance from the location of the store and contracted for the erection of a structure thereon for store and residence purposes and asked for a building permit. The permit being refused on the ground that the location was in a residential district, he appealed to the board of adjustment appointed under the ordinance, which ordered that the permit be granted because denial of it would result in unnecessary hardship. Held, on appeal by the former landlord of petitioner from a judgment of the district court on writ of certiorari affirming the action of the board, that there was not sufficient substantial evidence to warrant a finding that the board had not abused its discretion in making the order attacked.

5305.8. Enforcement and remedies. The city or town council, or other legislative body, may provide by ordinance for the enforcement of this act and of any regulation or ordinance made thereunder. A violation of this act, or of such ordinance or regulation is hereby declared to be a misdemeanor and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used in violation of this act, or of any ordinance or other regulation

made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929.

5305.9. Conflict with other laws. Wherever the regulations made under authority of this act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929.

CHAPTER 403

VACATION AND ABANDONMENT OF STREETS, PARKS, AND TOWNSITES

Section 5306. Council may discontinue streets.

5307. Notice must be given.

5308. Vacation of plats in abandoned townsites.

5309. Vacation of parks, boulevards, and public places in unincorporated towns.

5306. Council may discontinue streets. The council may discontinue a street or alley in a city or town, or any part thereof, upon the petition in writing of all the owners of lots on the streets or alleys, if it can be done without detriment to the public interest; provided that where the street or alley is to be closed for school purposes, a petition signed by seventy-five per cent (75%) of the lot owners on the whole street or alley to be closed, will be required.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1929.

References

Cited or applied as section 3479, revised codes, in *Barnard Realty Co. v. City of Butte*, 48 M 102, 113, 136 P 1064.

5307. Notice must be given. Before acting upon such petition a notice must be published or posted in three public places, stating when such petition will be acted on, and what street or alley, or part thereof, is asked to be vacated. Such notice must be published in a newspaper or posted at least one week before the petition is acted on.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R. C. M. 1921.

References

Cited or applied as section 3480, revised codes, in *Barnard Realty Co. v. City of Butte*, 48 M 102, 113, 136 P 1064.

5308. Vacation of plats in abandoned townsites. When there shall have been filed in the office of the county clerk of any county of this state a plat of any village or townsite, or a plat of any vineyard tracts, acreage tracts, suburban tracts or community tracts designated in section 4993, and it is desired by the owners of said lands to vacate said plat, the county commissioners of the county in which such plat is filed, upon petition of the owners of all the lands described in said plat, and upon such conditions as may be reasonable, shall cancel and annul said plat and shall vacate the lots, streets, alleys, parks and boulevards, if any, described in said plat, and thereafter the designation of said property shall be by metes and bounds or by legal subdivisions if the circumstances may require and the same shall be assessed accordingly. If any post office, store or other business establishment shall be located within such platted area, that fact shall not prevent the cancellation and vacating of said plat in accordance with the terms of this act, but, in all cases where it shall be necessary to designate the location of any such post office, store or other business property by metes and bounds for purposes of identification, such designation shall be made in the order to be entered by the board of county commissioners. Petitions under the terms of this act shall be signed by all the owners of the land in such platted area, shall distinctly refer to the original plat for purposes of identification and shall disclose that the petitioners are the owners of all the lands described in said plat, and that no rights of any person have intervened since the filing of said plat which would be adversely affected by the cancellation and annulment thereof. Provided, however, that when only a portion or portions of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion or portions is not less than four blocks in area, and situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded, which petition shall be addressed to the district court of the said county, setting forth the description of the portion or portions sought to be excluded and the reason or reasons for desiring such portion or portions to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than three weeks from the date of said citation, which citation shall be published in a newspaper of regular circulation in the said county, or if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state, which citation shall be published once a week for two successive weeks before the date of said hearing. Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion or portions of said village or townsite as prayed for in said petition, including any streets, alleys, parks or boulevards upon which no public easement or easements shall vest, and such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935.

5309. Vacation of parks, boulevards, and public places in unincorporated towns. Whenever a petition signed by freeholders, owning at least two-thirds of the property fronting on any street of any unincorporated town site in this state, shall be presented to the board of county commissioners of the county in which such town site is situated, praying said board to vacate any park, boulevard, or other public place, bordering on said street and the adjoining property, and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and, if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board, duly entered upon its minutes, declare such park, boulevard, or public place vacated, and thereupon the land included therein shall attach to and become part of the adjoining lots of said town site, and the title thereto pass with conveyance of said lots.

History: En. Sec. 1, Ch. 60, L. 1907;
Sec. 3549, Rev. C. 1907; re-en. Sec. 5309,
R. C. M. 1921.

References

Cited or applied as sections 3549, revised codes, with preceding sections, in *Brown v. Foster*, 48 M 114, 118, 135 P 993.

CHAPTER 404

HOUSING AUTHORITIES LAW—COOPERATION OF CITIES AND TOWNS—INVESTMENTS IN SECURITIES OF HOME OWNERS' LOAN CORPORATION AND INSTITUTIONS ORGANIZED UNDER NATIONAL HOUSING ACT

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5309.36. Home Owners' Loan Corporation bonds as security for deposit of public funds.

5309.1. Short title. This act may be referred to as the Housing Authorities Law.

History: En. Sec. 1, Ch. 140, L. 1935.

5309.2. Declaration of necessity. It is hereby declared that unsanitary or unsafe dwelling accommodations exist in various cities of the first and second class of the state, and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in all such cities many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in various cities of the first or second class of the state there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the state and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the clearance, re-planning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 140, L. 1935.

5309.3. Definitions. The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "Housing Authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this act for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city of the first or second class which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Municipality" shall mean any city, town or incorporated village, other than the city as defined above, which is located within the territorial boundaries of an authority.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this act.

(7) "Government" shall include the state and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the state of Montana.

(9) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or (b) to provide safe and sanitary dwelling accommodations for persons of low income. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodations.

(12) "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this act.

(13) "Mortgage" shall include deeds of trust, mortgage, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(15) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

History: En. Sec. 3, Ch. 140, L. 1935.

5309.4. Notice, hearing and creation of authority. Any twenty-five (25) residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of the state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commission-

ers; (2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this act, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 4, Ch. 140, L. 1935.

5309.5. Appointment, qualifications and tenure of commissioners—officers, legal assistance—delegation of power. An authority shall consist of five commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official.

The commissioners who are first appointed shall be designated by the mayor to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. Three commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

History: En. Sec. 5, Ch. 140, L. 1935.

5309.6. Duty of the authority and commissioners of the authority. The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this act and the laws of the state and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

History: En. Sec. 6, Ch. 140, L. 1935.

5309.7. Interested commissioners or employees. No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

History: En. Sec. 7, Ch. 140, L. 1935.

5309.8. Removal of commissioners. The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but

only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten (10) days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating wilfully any law of the state or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten (10) days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such wilful violation.

A commissioner shall be deemed to have acquiesced in a wilful violation by the authority of a law of this state or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon.

History: En. Sec. 8, Ch. 140, L. 1935.

5309.9. Powers of authority. An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, re-planning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, re-planning, installing, opening or closing of streets, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the state, its subdivisions and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily

provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History: En. Sec. 9, Ch. 140, L. 1935.

5309.10. Cooperation between authorities. Any two or more authorities may cooperate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, constructing or operating a housing project or projects located partly within the boundaries of each of said authorities. Any housing authority may construct and operate a housing project within the boundaries of any other housing authority provided that (1) such other housing authority consents thereto, and (2) said housing project is located within ten miles of the city which is included in the boundaries of the housing authority desiring to construct and operate such project.

History: En. Sec. 10, Ch. 140, L. 1935.

5309.11. Eminent domain. The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this act after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either: (a) sections 9933 to 9958, both inclusive; or (b) pursuant to any other applicable statutory provisions for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality within the boundaries of the authority or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation.

History: En. Sec. 11, Ch. 140, L. 1935.

5309.12. Acquisition of land for government. The authority may acquire by purchase or by the exercise of its power of eminent domain as aforesaid, any property real or personal for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

History: En. Sec. 12, Ch. 140, L. 1935.

5309.13. Zoning and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated.

History: En. Sec. 13, Ch. 140, L. 1935.

5309.14. Types of bonds. The authority shall have power and is hereby authorized from time to time in its discretion to issue for any of its corporate purposes:

(a) Bonds on which the principal and interest are payable

(1) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof, or

(2) exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds;

provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated housing project or projects and the funds received from the sale or disposal thereof and, if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues or, in certain instances as hereinafter provided, by a mortgage of the property comprising such designated housing project or projects and the revenue therefrom.

(b) Bonds for the payment of the principal and interest of which the credit of the authority is pledged and which may be additionally secured by a pledge of the revenues of the authority or any part thereof pursuant to a resolution or trust indenture of the authority or, in certain instances as hereinafter provided, may be additionally secured by a mortgage of the property and revenues of the authority or any part thereof.

Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within

the meaning of any constitutional or statutory provision of the laws of the state. Bonds may be issued under this act notwithstanding any debt or other limitation prescribed by any statute.

History: En. Sec. 14, Ch. 140, L. 1935.

5309.15. Form and sale of bonds. The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty (60) years from their respective dates, bear interest at such rate or or rates, not exceeding six per centum (6%) per annum payable semi-annually, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city ofor in the city of....., provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this act shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935.

5309.16. Provisions of bonds—trust indentures, and mortgages. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees, and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant that the authority warrants the title to the premises.

(11) To covenant as to the rents and fees and to be charged, the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues and as to the use and disposition to be made thereof.

(12) To covenant as to the use of any or all of its property, real or personal.

(13) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan and/or grant; (b) all of the rents, fees and revenues of any housing project or projects or parts thereof; (c) any moneys held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and (e) any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds.

(14) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(15) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(16) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, the holders of which must consent thereto and the manner in which such consent may be given.

(17) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(18) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(19) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(20) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(21) To covenant to surrender possession of all or any part of any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right without judicial proceedings to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(22) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(23) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(24) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to

give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of the state and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in section 5309.17.

History: En. Sec. 16, Ch. 140, L. 1935.

5309.17. Power to mortgage when project financed with aid of a government. In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(a) To vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings so long as a government shall be the holder of any of the bonds secured by such mortgage.

(b) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved.

(c) To vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved.

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee (in its absolute discretion) shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid.

History: En. Sec. 17, Ch. 140, L. 1935.

5309.18. Remedies of an obligee of authority. An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this act.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(c) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

History: En. Sec. 18, Ch. 140, L. 1935.

5309.19. Additional remedies conferrable by mortgage or trust indenture. Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations, the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

History: En. Sec. 19, Ch. 140, L. 1935.

5309.20. Remedies cumulative. All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

History: En. Sec. 20, Ch. 140, L. 1935.

5309.21. Limitations on remedies of obligee. No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in section 5309.17. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in section 5309.17 and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

History: En. Sec. 21, Ch. 140, L. 1935.

5309.22. Foreclosure sale subject to agreement with government. Notwithstanding anything in this act to the contrary, any purchaser or pur-

chasers at a sale of real or personal property of the authority whether pursuant to any foreclosure of a mortgage, pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon.

History: En. Sec. 22, Ch. 140, L. 1935.

5309.23. Contracts with federal government. In addition to the powers conferred upon the authority by other provisions of this act, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this act to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this act to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this act to undertake.

History: En. Sec. 23, Ch. 140, L. 1935.

5309.24. Security for funds deposited by authorities. The authority may by resolution provide that (1) all moneys deposited by it shall be secured by obligations of the United States or of the state of a market value equal at all times to the amount of such deposits or (2) by any securities in which savings banks may legally invest funds within their control or (3) by an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits.

History: En. Sec. 24, Ch. 140, L. 1935.

5309.25. Bonds legal investments. The bonds of an authority are hereby declared to be securities in which the city or the state may invest. Bonds of the authority, when they are secured by a first pledge of the revenues of, or a first mortgage lien on, property the value of which does not exceed $66\frac{2}{3}$ per centum of the aggregate principal amount of such bonds outstanding, are hereby declared to be securities in which all public officers and bodies of the state, municipalities, municipal subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, all executors, administrators, guardians, trustees, and all other fiduciaries in the state may legally invest funds within their control.

History: En. Sec. 25, Ch. 140, L. 1935.

5309.26. Reports. The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year, and

shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this act.

History: En. Sec. 26, Ch. 140, L. 1935.

5309.27. Act controlling. That insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 28, Ch. 140, L. 1935.

5309.28. Declaration of necessity. It is hereby declared that unsanitary or unsafe dwelling accommodations exist in various areas of the state, and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the state and impair economic values; that the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination.

History: En. Sec. 1, Ch. 138, L. 1935.

5309.29. Definitions. The following terms, whenever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority organized pursuant to the housing authorities law of this state.

(2) "City" shall mean any city of the first or second class of the state which is, or is about to be, included in the territorial boundaries of a housing authority.

(3) "Municipality" shall mean any city, town or incorporated village of the state.

(4) "Housing project" shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or unsanitary housing, and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

History: En. Sec. 2, Ch. 138, L. 1935.

5309.30. Conveyance, lease or agreement in aid of housing project. For the purpose of aiding and cooperating in the planning, construction and operation of housing projects located within their respective territorial boundaries, the state, its subdivisions and agencies, and any county, city, or municipality of the state may, upon such terms, with or without consideration, as it may determine:

(a) grant, sell, convey or lease any of its property to a housing authority or the United States of America or any agency thereof; and

(b) to the extent that it is within the scope of each of their respective functions, (1) cause the services customarily provided by each of them to be rendered for the benefit of the housing authority and/or the occupants of such housing projects, and (2) provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects, and (3) enter into any agreement to open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities, to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality.

In connection with the exercise of this power, any city or municipality may incur the entire expense of any such public improvements located within its territorial boundaries without assessment against abutting property owners. Any law of statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease or agreement provided for in this section may be made by the state, its subdivisions and agencies, and any county, city, or municipality of the state without appraisal, public notice, advertisement or public bidding.

History: En. Sec. 3, Ch. 138, L. 1935.

5309.31. Advances and donations by city and municipality. Immediately after the incorporation of the housing authority, the council or other governing body of the city included within the territorial boundaries of such authority shall make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of such housing authority, and shall appropriate such amount to the authority out of any moneys in the city treasury not appropriated to some other purposes, and shall cause the moneys so appropriated to be paid the authority as a donation. In addition thereto, the city and any municipality located in whole or in part within the boundaries of a housing authority shall have the power annually and from time to time to make donations or advances to the authority of such sums as the city or municipality in its discretion may determine. The authority, when it has money available therefor, shall reimburse the city or municipality for all advances by way of loan made to it.

History: En. Sec. 4, Ch. 138, L. 1935.

5309.32. Action of city or municipality by resolution. Except as otherwise provided in this act, all action authorized to be taken under this act by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted.

History: En. Sec. 5, Ch. 138, L. 1935.

5309.33. Purpose of act. It is the purpose and intent of this act that the state, its subdivisions and agencies, in any county, city or municipality

of the state shall be authorized, and are hereby authorized, to do any and all things necessary to aid and cooperate in the planning, construction and operation of housing projects by the United States of America and by housing authorities.

History: En. Sec. 6, Ch. 138, L. 1935.

5309.34. Supplemental nature of act. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 7, Ch. 138, L. 1935.

5309.35. Investment by fiduciaries in Home Owners' Loan Corporation bonds authorized. Notwithstanding any other provision of law, it shall be lawful for any executor, administrator, guardian, or conservator, trustee or other fiduciary to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the "Home Owners' Loan Corporation" guaranteed as to principal and interest by the United States government. Notwithstanding other provisions of the law, it shall be lawful for any insurance company, building and loan association, bank, trust company, investment company and other financial institutions operating under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the Home Owners' Loan Corporation and in obligations of national mortgage associations or similar credit institutions now or hereafter organized under title III of the national housing act and any amendments thereto, now or hereafter made.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935.

5309.36. Home Owners' Loan corporation bonds as security for deposit of public funds. Subject to such rules and regulations as may be prescribed by the superintendent of banks, the bonds and other obligations herein made eligible for investment, may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required, or may by law be deposited as security.

History: En. Sec. 2, Ch. 5, Ex. L. 1933; amd. Sec. 2, Ch. 37, L. 1935.

CHAPTER 405

ENTRY OF TOWN SITES ON PUBLIC DOMAIN FOR INCORPORATED CITIES AND TOWNS

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5310. Council to enter land in United States land office. It is the duty of the city or town council of any city or town in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes of proceedings, at a regular meeting, to authorize the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this article and the intentions of the act of Congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and to make proof when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

History: En. Sec. 5060, Pol. C. 1895; re-en. Sec. 3493, Rev. C. 1907; re-en. Sec. 5310, R. C. M. 1921.

5311. Filing approved plat. The corporate council of every city and town, situated upon the public lands of this state, must, within three months after date of receipt at the United States district land office of the approved plat of the township, embracing the lands upon which the town or city is situated, file in said land office an application in writing, describing the tract of land thus occupied, and thereafter make proof and payment for the tract in the manner required by law.

History: En. Sec. 5061, Pol. C. 1895; re-en. Sec. 3494, Rev. C. 1907; re-en. Sec. 5311, R. C. M. 1921.

5312. Survey. The said council must, after the filing of the application, if not previously done, cause a survey to be made by some competent person of the lands which the inhabitants of said city or town may be entitled to claim under the said act of Congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated in any manner to public use, and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said city or town site must be designated on the map, showing the name or names of the possessor or occupants and claimants if other than the occupant of each particular lot and parcel of land; and in case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely.

History: En. Sec. 5062, Pol. C. 1895; re-en. Sec. 3495, Rev. C. 1907; re-en. Sec. 5312, R. C. M. 1921.

5313. Plat must be made in duplicate—contents. A plat thereof must be made in duplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county clerk of the county wherein the city or town is situated, and one must be deposited with the city or town clerk. These plats shall be considered public records, and must each be accompanied with a copy of the field notes, and the county clerk must make a record thereof in a book to be kept by him for that purpose. The said surveyor must number the blocks as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats, field notes, and records.

History: En. Sec. 5063, Pol. C. 1895; re-en. Sec. 3496, Rev. C. 1907; re-en. Sec. 5313, R. C. M. 1921.

5314. Notice of survey. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or town site not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in any newspaper or newspapers published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the council is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5064, Pol. C. 1895; re-en. Sec. 3497, Rev. C. 1907; re-en. Sec. 5314, R. C. M. 1921.

5315. What dedicated to public use. All streets, roads, lanes and alleys, public squares, school lots, cemeteries, commons, parks, and levees, surveyed, marked, and platted on the map of any city or town site, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use by the filing of such city or town plat in the office of the county clerk, and become the property of such town or city, and be subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5065, Pol. C. 1895; re-en. Sec. 3498, Rev. C. 1907; re-en. Sec. 5315, R. C. M. 1921.

5316. What plat must show. Such plat must show such matters as are contained in section 4981 of this code, and must be made, kept, and filed in the same manner as provided in section 4988 of this code.

History: En. Sec. 5066, Pol. C. 1895; re-en. Sec. 3499, Rev. C. 1907; re-en. Sec. 5316, R. C. M. 1921.

5317. Assessment to pay expenses. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth,

and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not otherwise be improved, or uninclosed, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes. each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury.

History: En. Sec. 5067, Pol. C. 1895; re-en. Sec. 3500, Rev. C. 1907; re-en. Sec. 5317, R. C. M. 1921.

5318. Claims for lands. Every person, company, corporation, or association, claimant of any city or town lot or parcel of land within the limits of such city or town site, must present to the council, by filing the same with the clerk thereof, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of said city or town site as will fully exhibit the particular lot or parcel of land so claimed, with the abutments; and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall thereon certify to be due for the assessment mentioned in the preceding section, together with the further sum of five dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5068, Pol. C. 1895; re-en. Sec. 3501, Rev. C. 1907; re-en. Sec. 5318, R. C. M. 1921.

5319. Deficit in expenses—mode of collection. If it is found that the amounts hereinbefore specified as assessments and fees for cost and

expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in section 5317 of this code; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5069, Pol. C. 1895; re-en. Sec. 3502, Rev. C. 1907; re-en. Sec. 5319, R. C. M. 1921.

5320. Deed to be given after six months—adverse claims. At the expiration of six months after the issuance of such certificate, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, or to his, her, or its heirs, administrator, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided concludes the rights of third persons; but such third persons may have their action in the premises to determine their alleged interest in such lands against such grantee, his heirs or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action shall be commenced within two years after such deed shall have been filed for record in the office of the county clerk of the county where such lands are situate. Nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5070, Pol. C. 1895; re-en. Sec. 3503, Rev. C. 1907; re-en. Sec. 5320, R. C. M. 1921.

5321. Mining claims. Whenever mining claims have been located prior to the passage of this code, and where the same are prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, are not in any manner affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

History: En. Sec. 5071, Pol. C. 1895; re-en. Sec. 3504, Rev. C. 1907; re-en. Sec. 5321, R. C. M. 1921.

5322. Settlement of adverse claims. In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject-matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed

in accordance with the facts; but in all other cases of adverse claim the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the city or town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment. In case no such action be commenced within the time herein prescribed, the council must deliver a deed to the party in possession, as provided in this chapter.

History: En. Sec. 5072, Pol. C. 1895; re-en. Sec. 3505, Rev. C. 1907; re-en. Sec. 5322, R. C. M. 1921.

5323. Notice of filing plat. The said council must give public notice by advertising for four weeks in any newspaper published in said city or town, and if there be no newspaper published in said city or town, then by publication in some newspaper having the most general circulation in such city or town, and not less than five written or printed notices must be posted within the limits of such city or town site; such notice must state that the plat thereof has been filed in the clerk's office. If any person, company, association, or any other claimant of lands in such city or town, fails, neglects, or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this article, within six months after the filing of said plat, the clerk must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessment certified to by such clerk as due, under this article; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the said council must advertise all such lots and parcels of land for sale, in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5073, Pol. C. 1895; re-en. Sec. 3506, Rev. C. 1907; re-en. Sec. 5323, R. C. M. 1921.

5324. Sale of delinquent lands. At the time of the sale mentioned in the advertisement, the marshal of the city or town must sell all such parcels of land so remaining delinquent at public auction to the highest bidder for cash, at some public place within the limits of the city or town site; and he must give the purchaser at such sale a certificate of his purchase, setting forth therein the description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments and the costs of making the sale, which costs shall be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5074, Pol. C. 1895; re-en. Sec. 3507, Rev. C. 1907; re-en. Sec. 5324, R. C. M. 1921.

5325. Redemption. At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the

purchaser, or the clerk of the council for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs or assigns, is entitled to demand and receive from the council a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs or assigns, to writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5075, Pol. C. 1895; re-en. Sec. 3508, Rev. C. 1907; re-en. Sec. 5325, R. C. M. 1921.

5326. Unclaimed lands. If there be any unoccupied or vacant unclaimed lands within the limits of such city or town site, the council must cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks, and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the council may sell the same in suitable parcels to possessors of adjoining lands or to other persons of said town at a price not less than five dollars per acre or fraction of an acre; and in case two or more claimants apply for the same tract, or parcel of the same tract, they must sell the same by auction to the highest bidder. If any such lands remain unsold at the end of six months after the filing of the town plat, the council has power to sell such vacant lands at public or private sale in such manner and on such terms as they may deem advisable for the best interests of the town, and shall give deeds therefor to the several purchasers.

History: En. Sec. 5076, Pol. C. 1895; re-en. Sec. 3509, Rev. C. 1907; re-en. Sec. 5326, R. C. M. 1921.

5327. School lots. All school lots and parcels of land reserved for school purposes must be conveyed to the school trustees of the school district in which such city or town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5077, Pol. C. 1895; re-en. Sec. 3510, Rev. C. 1907; re-en. Sec. 5327, R. C. M. 1921.

5328. Payment of expenses—disposition of surplus moneys. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge upon the city or town treasury of each particular city or town ordering the work to be done, to be paid out of the treasury, upon the order of the council; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be paid into the general fund.

History: En. Sec. 5078, Pol. C. 1895; re-en. Sec. 3511, Rev. C. 1907; re-en. Sec. 5328, R. C. M. 1921.

5329. Informality not to invalidate. No mere informality, failure, or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed.

History: En. Sec. 5079, Pol. C. 1895; re-en. Sec. 3512, Rev. C. 1907; re-en. Sec. 5329, R. C. M. 1921.

5330. City or town site on school lands. When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title and purchase the same from the state and dispose of the same in the manner provided in this chapter for the disposing of lands purchased from the United States.

History: En. Sec. 5080, Pol. C. 1895; re-en. Sec. 3513, Rev. C. 1907; re-en. Sec. 5330, R. C. M. 1921.

CHAPTER 406

ENTRY OF TOWN SITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS

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5331. District judge to enter at land office. It is the duty of the judge of the district court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situated in the county of such district judge, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and the regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of Congress of the United States entitled “An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven,” and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

History: En. Sec. 5100, Pol. C. 1895; re-en. Sec. 3514, Rev. C. 1907; re-en. Sec. 5331, R. C. M. 1921.

NOTE.—For earlier acts, see sections 2011 to 2030, fifth division compiled statutes 1887.

Operation and Effect

In this section there is a distinct recognition of a town as an entity without

incorporation or municipal charter. State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

5332. Estimate of expenses. The district judge of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any unincorporated town, whose names appear upon the assessment roll for the year preceding such application—which petition shall set forth the existence, name, and locality of such town; whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands the quarter-sections or lesser subdivisions covered thereby must be stated; the estimated number of its inhabitants; the number of separate lots or parcels of land within such town site, and the amount of land to which they are entitled under said act of Congress—must estimate the cost of entering such land, and of the survey and recording of the same, and must indorse such estimate upon said petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said district judge may cause an enumeration of the inhabitants of such town to be made by some competent person, who must be appointed for that purpose by such judge; and such enumeration must be returned by the person making the same, exhibiting therein names of all the heads of families and occupants of lots, lands, or premises within such town site, alphabetically arranged, verified by his oath, to the judge.

History: En. Sec. 5101, Pol. C. 1895; re-en. Sec. 3515, Rev. C. 1907; re-en. Sec. 5332, E. C. M. 1921.

5333. Survey of lands. The judge must thereupon cause a survey to be made by some competent person of the lands which the inhabitants of said town may be entitled to claim under the said act of Congress, located according to the legal subdivision of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments. Such surveys must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, levees, or parks, cemeteries, and commons, as the same exist, and have been heretofore dedicated in any manner to public use; and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association, within said town site, must be designated on the plat, showing the name or names of the possessor or occupant and claimant, if other than the occupant, of each particular lot and parcel of land. In case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines (in different color from the body of the plat) of such part of any premises so disputed or claimed adversely. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which shall be duly certified under oath by the surveyor, one of which shall be filed with the county clerk of the county wherein the town is situated, one must be deposited with the judge, and one must be deposited with the justice of the peace resident in or nearest to such town.

History: En. Sec. 5102, Pol. C. 1895; re-en. Sec. 3516, Rev. C. 1907; re-en. Sec. 5333, E. C. M. 1921.

5334. Plats as public records—contents of plats. These plats are public records, and must be accompanied with a copy of the fieldnotes, and the county clerk shall make a record thereof in a book to be kept by him for that purpose. The surveyor must number the blocks, as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town site surveyed as herein provided, which said numbers are a sufficient description of any parcel of land in said plat when mentioned by reference to such town plats.

History: En. Sec. 5103, Pol. C. 1895; re-en. Sec. 3517, Rev. C. 1907; re-en. Sec. 5334, R. C. M. 1921.

5335. Notice of survey to be given. Before proceeding to make such survey, at least ten day's notice must be given by the judge, by posting within the limits of such town site not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in a newspaper published in such town, if one there be. The survey of said town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the said judge is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5104, Pol. C. 1895; re-en. Sec. 3518, Rev. C. 1907; re-en. Sec. 5335, R. C. M. 1921.

5336. What dedicated to public use. All streets, roads, lanes, and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked, and platted on the map of any town site, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county clerk, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5105, Pol. C. 1895; re-en. Sec. 3519, Rev. C. 1907; re-en. Sec. 5336, R. C. M. 1921.

Operation and Effect

In this section there is a distinct recog-

nition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

5337. What plat must show. Such plat must show the same matters as are contained in section 4981 of this code, and must be made, filed and kept in the same manner as prescribed in section 4988 of this code.

History: En. Sec. 5106, Pol. C. 1895; re-en. Sec. 3520, Rev. C. 1907; re-en. Sec. 5337, R. C. M. 1921.

5338. Assessment for expenses. Each lot or parcel of said land having thereon valuable improvements, or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, must be rated and assessed by the judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, must be rated and assessed at the sum of one

dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding one-quarter of an acre in area, must be rated and assessed at the sum of two dollars; and each lot and parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, must be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half an acre in area must be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not be otherwise improved, or uninclosed, claimed by any persons, corporation, or association, must be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there are two or more separate buildings, occupied or used ordinarily as dwellings, or for business purposes, each such building, for the purposes of this section, is considered as standing on a separate lot of land, but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said town lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry, and purchase, and the costs and expenses attendant upon the making of such survey and recording thereof.

History: En. Sec. 5107, Pol. C. 1895; re-en. Sec. 3521, Rev. C. 1907; re-en. Sec. 5338, R. C. M. 1921.

5339. Disposition of surplus funds. Any sum of money remaining, after defraying all the necessary expenses of location, entry, surveying, platting, and recording of lands, and the expenses of the judge hereinafter mentioned, must be deposited in the county treasury, to the credit of the fund of each particular town, and kept separate by the county treasurer, to be paid out by him only on the written order of such judge, until after the expiration of the time for a final settlement of the affairs of such town lands, as hereinafter provided, at which time any and all balances of moneys so remaining to the credit of each town shall be transferred by such county treasurer to the school fund of the particular school district in which said town is situated.

History: En. Sec. 5108, Pol. C. 1895; re-en. Sec. 3522, Rev. C. 1907; re-en. Sec. 5339, R. C. M. 1921.

5340. Claimants to make affidavits. Every person, corporation, or association, claimant of any town lot or parcel of land within the limits of such town site, must present to the judge, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person, or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof, as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of the town site as will fully exhibit the particular lot or parcel of land so claimed, with the abutments; and every such claimant, at the time of filing such affidavit, must pay to

such judge such sum of money as such judge shall thereon certify to be due for the assessment mentioned in section 5338 of this code, together with the further sum of five dollars, to be appropriated to the payment of the expenses incurred in carrying out the provisions of this chapter, and the judge must thereupon give to such claimant a certificate containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The judge must procure a bound book for each town in his county, wherein he must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5109, Pol. C. 1895; re-en. Sec. 3523, Rev. C. 1907; re-en. Sec. 5340, R. C. M. 1921.

5341. Additional assessments to pay expenses. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the judge must estimate the deficiency, and assess such deficiency pro rata upon all the lots and parcels of lands in such town, and declare the same upon the basis set down in section 5338 of this code, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5110, Pol. C. 1895; re-en. Sec. 3524, Rev. C. 1907; re-en. Sec. 5341, R. C. M. 1921.

5342. Deeds to be delivered in six months—adverse claims. At the expiration of six months after the issuance of the certificate mentioned in the preceding section, if there has been no adverse claim filed in the meantime, the judge must make, execute, acknowledge, and deliver to each claimant or to his, her, or its heirs, administrators, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed. No conveyance of any such lands, made as in this chapter provided, concludes the rights of third persons; but such third persons may have their actions in the premises to determine the alleged interest in such lands against such grantee, his heirs, or assigns, to which they may deem themselves entitled either in law or equity. No action for the recovery of the possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action is commenced within two years after such deeds have been filed for record in the office of the county clerk of the county where such lands are situated. Nothing herein must be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5111, Pol. C. 1895; re-en. Sec. 3525, Rev. C. 1907; re-en. Sec. 5342, R. C. M. 1921.

5343. Mining claims. Whenever mining claims have been located and held bona fide for mining purposes, such mining rights, according to the metes and bounds located and claimed, must not in any manner be affected

by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale or pretended sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims has been abandoned by the holders thereof.

History: En. Sec. 5112, Pol. C. 1895; re-en. Sec. 3526, Rev. C. 1907; re-en. Sec. 5343, R. C. M. 1921.

5344. Adverse claims—actions for possession. In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the judge by an agreement in writing, specifying particularly the subject-matter in dispute, and may agree that his decision shall be final; in which case the said judge may hear the proofs, and must execute a deed in accordance therewith; but in all other cases of adverse claim, the party out of possession must commence his action in a court of competent jurisdiction within six months after the filing of the town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the judge, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the judge must execute and deliver a deed of such premises in accordance with the judgment. In case no such action is commenced within the time herein prescribed, the judge must deliver his deed to the party in possession, as provided in section 5342 of this code.

History: En. Sec. 5113, Pol. C. 1895; re-en. Sec. 3527, Rev. C. 1907; re-en. Sec. 5344, R. C. M. 1921.

5345. Notice of filing plat. The judge must give public notice, by advertisement, for four weeks in some newspaper published in the county, if one there be, and if there be no newspaper published in said county, then by not less than five written or printed notices posted within the limits of such town site, that the plat thereof has been filed in the county clerk's office; and if any person, company, or association, or other claimants of lands in such town, fails, neglects, or refuses to make application to the judge for a deed, and to pay the sum specified, within six months after the filing of said plat, the judge must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessments certified to by such judge as due under section 5338 of this code; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the judge must advertise all such lots and parcels of land for sale in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5114, Pol. C. 1895; re-en. Sec. 3528, Rev. C. 1907; re-en. Sec. 5345, R. C. M. 1921.

5346. Sale of delinquent lands. At the time of sale mentioned in said advertisement, the judge must sell all such parcels of land so remaining delinquent, by public auction, to the highest bidder for cash, at some public place within the limits of said town site; and he must give to the purchaser at such sale a certificate of his purchase, setting forth therein a description

of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments, and the costs of making the sale, which costs must be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5115, Pol. C. 1895; re-en. Sec. 3529, Rev. C. 1907; re-en. Sec. 5346, R. C. M. 1921.

5347. Redemption. At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or to the judge for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs, or assigns, is entitled to demand and receive from the judge a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs, or assigns, to a writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5116, Pol. C. 1895; re-en. Sec. 3530, Rev. C. 1907; re-en. Sec. 5347, R. C. M. 1921.

5348. Laying out and sale of unoccupied or unclaimed lands. If there be any unoccupied or vacant unclaimed lands within the limits of such city or town site, the judge may cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the judge may sell the same in suitable parcels to possessors of adjoining lands residing thereon, or to other persons, at a price not less than ten dollars per lot; and in case two or more claimants apply for the same lot or lots, he must sell the same by auction to the highest bidder for cash. If any such lots remain unsold at the end of six months after the filing of the town plat, the said judge must sell said unclaimed lots, on application, at public auction to the highest bidder for cash, and give deeds therefor to the several purchasers, but, nevertheless, the judge may sell and he is hereby empowered to sell and execute deeds for any unoccupied, vacant, and unsurveyed portions of a town site, without first causing the same to be surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided, whenever it shall be made to appear to the judge, by a written application to purchase the same, established by evidence that the unsurveyed portions of the town site sought to be purchased are irregular and fragmentary strips or pieces of land within the exterior boundaries of the town site, and that they are unoccupied and vacant, and that it would be an unnecessary expense and impracticable to cause the same to be first surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided; and the sale of such unoccupied, vacant, and unsurveyed portions of a town site shall be conducted, as near as may be, in the manner provided for the sale of town lots, except that the price to be paid for any one irregular, fragmentary, unoccupied, vacant, and unsurveyed portion of a town site shall not be less than one hundred dollars; and all deeds heretofore executed by the judge who has sold and conveyed irregular, fragmentary, unoccupied,

vacant, and unsurveyed portions of a town site are hereby confirmed and made lawful, valid, and effectual as if such, or any, unsurveyed portion of the town site had first been surveyed and platted into blocks, lots, roads, streets, and alleys or otherwise subdivided.

History: En. Sec. 5117, Pol. C. 1895; amd. Sec. 1, Ch. 99, L. 1903; amd. Sec. 1, Ch. 130, L. 1907; re-en. Sec. 3531, Rev. C. 1907; amd. Sec. 1, Ch. 22, L. 1911; re-en. Sec. 5348, R. C. M. 1921.

References

Cited or applied as section 5117, political code, before amendment, in *State ex rel. Hicklin v. Webster*, 28 M 104, 109, 72 P 295.

5349. School lots. All school lots and parcels of land reserved for school purposes, as aforesaid, by order of the judge, must be conveyed to the school trustees of the school district in which such town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5118, Pol. C. 1895; re-en. Sec. 3532, Rev. C. 1907; re-en. Sec. 5349, R. C. M. 1921.

5350. Vacancy in office of judge. In case a vacancy occurs from any cause in the office of district judge during the pendency of any of the proceedings to be taken under this chapter, upon the election or appointment of a successor, it is the duty of the county clerk to make out a certificate, under seal, showing the facts and name of such successor, and file the same in his office, and record such certificate in a book of deeds, and attach the original to the town site book in his office.

History: En. Sec. 5119, Pol. C. 1895; re-en. Sec. 3533, Rev. C. 1907; re-en. Sec. 5350, R. C. M. 1921.

5351. Clerical work must be performed by clerk of district court. All the clerical work under this chapter must be performed by the clerk of the district court, and the fees received therefor paid into the county treasury.

History: En. Sec. 5120, Pol. C. 1895; re-en. Sec. 3534, Rev. C. 1907; re-en. Sec. 5351, R. C. M. 1921.

5352. Accounts of judge. Every district judge, when fulfilling the duties imposed upon him by the act of congress aforesaid and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the county treasurer of his county, and at the end of one year from the time when the town plat of any town is filed in the county clerk's office, he must settle up all the affairs pertaining to said town, and pay over to the county treasurer all moneys belonging to said town, for the use and benefit of the school district in which said town may be situate. If any claims to lands in such town are the subject of litigation, the same must be finally settled by such judge whenever the final judgment has been rendered.

History: En. Sec. 5121, Pol. C. 1895; re-en. Sec. 3535, Rev. C. 1907; re-en. Sec. 5352, R. C. M. 1921.

5353. Deposit of books with county clerk. Whenever the affairs of any such town shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of his county, to be thereafter kept in the custody of the county clerk as public records.

History: En. Sec. 5122, Pol. C. 1895; re-en. Sec. 3536, Rev. C. 1907; re-en. Sec. 5353, R. C. M. 1921.

5354. Informalities or irregularities not to invalidate—legalizing deeds. No mere informality, failure, or omission, on the part of any person or officer named in this chapter, invalidates the acts of such person or officer, but every certificate or deed granted to any person, pursuant to the provisions of this chapter, is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed. And if the original or first deed executed by the district judge granting and conveying any lot or lots be lost or destroyed, or cannot be found, and if such deed or deeds so executed have not been recorded in the office of the county clerk of the county in which the property is situated, the district judge shall, upon written application stating the facts, execute and deliver another deed or deeds, as the case may be, to the purchaser of such lot or lots, or to his heirs or grantees, upon a showing sustained by evidence satisfactory to the district judge that the original or first deed or deeds were executed and have been lost or destroyed, or cannot be found, and have not been recorded; and all deeds heretofore executed by the district judge in lieu of the original or first deed or deeds, which have been lost or destroyed, or which could not be found, and which have not been recorded in the office of the county clerk of the county in which the property is situated, are hereby legalized, confirmed, and made valid and effectual, as if such deed or deeds were the original, first, and only deed or deeds executed therefor.

History: En. Sec. 5123, Pol. C. 1895; re-en. Sec. 3537, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1911, re-en. Sec. 5354, R. C. M. 1921.

5355. City or town site on school lands. When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title, and purchase the same from the state, and dispose of the same in the manner provided in this chapter for disposing of lands purchased from the United States.

History: En. Sec. 5124, Pol C. 1895; re-en. Sec. 3538, Rev. C. 1907; re-en. Sec. 5355, R. C. M. 1921.

5356. District judge authorized to execute deeds—procedure. Wherever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a town site, under the provisions of an act of congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or other and subsequent acts of congress relating to entering lands for town site purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such town site is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex-officio probate judge, for any lot or tract of land situated in such town site other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county

wherein such lands are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.

History: En. Sec. 1, Ch. 9, L. 1919; re-en. Sec. 5356, R. C. M. 1921.

5357-5365. Repealed—Chapter 163, laws of 1935.

CHAPTER 407

COMMISSION FORM OF GOVERNMENT

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5366. Any city may reorganize under commission form. Any city may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 57, L. 1911; 1911, in *Shapard v. City of Missoula*, 49 M 269, 280, 141 P 544; *State ex rel. Lease v. Wilkinson et al.*, 59 M 327, 333, 196 P 878; *State v. Dryburgh*, 62 M 36, 45, 203 P 508.

References

Cited or applied as chapter 57, laws of

5367. Submission to electors—petition and order of election. Upon a petition being filed with the city council, signed by not less than twenty-five per cent. of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this act be submitted to the qualified electors of such city, said city council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such city, under the provisions of this act, shall be submitted to the qualified electors of such city.

Such order of the city council shall specify therein the time when such election shall be held, which must be within ninety days from the date of the filing of such petition.

History: En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec. 5367, R. C. M. 1921.

5368. Proclamation of election. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such city.

History: En. Sec. 3, Ch. 57, L. 1911; re-en. Sec. 5368, R. C. M. 1921.

5369. Ballots—form. At such election the ballots to be used shall be printed upon plain, white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of the question of reorganization of the city of under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly," and shall be substantially in the following form:

For reorganization of the city of under chapter (name of chapter containing this act) of the act of the twelfth legislative assembly.

Against reorganization of the city of under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly.

Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R. C. M. 1921.

5370. Certificate of result of election—no further election for two years. If such proposition is adopted, the mayor shall transmit to the governor, to

the secretary of state, and to the county clerk and recorder, each, a certificate stating that such proposition was adopted.

If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of two years thereafter.

History: En. Sec. 5, Ch. 57, L. 1911; re-en. Sec. 5370, R. C. M. 1921.

5371. Calling of election to elect city officers. If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said city, and also in at least ten of the most public places in said city.

History: En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec. 5371, R. C. M. 1921.

5372. Manner of conducting election—canvassing votes. Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 7, Ch. 57, L. 1911; re-en. Sec. 5372, R. C. M. 1921.

5373. Laws governing city—ordinances—territorial limits and property. All laws governing cities of the first, second, and third classes, and not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All by-laws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this act. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description, which were vested in any such city under its former organization, shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided for in this act.

History: En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R. C. M. 1921.

5374. Number of councilmen—vacancies and how filled. In every city of the third class, there shall be a mayor and two councilmen; in every city of the second class, a mayor and two councilmen; in every city of the first class having a population of less than twenty-five thousand, a mayor and two councilmen, and in every city of the first class having a population of twenty-five thousand or more, a mayor and four councilmen, and the mayor and all councilmen shall be elected at large.

If any vacancy shall occur in the office of mayor or councilmen, the remaining members of the council shall, by majority vote, elect a person to fill such vacancy until the next general city election, and if, in filling such vacancy, a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R. C. M. 1921.

5375. Beginning of term of office. The mayor and councilmen elected at such special election shall qualify, and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

History: En. Sec. 10, Ch. 57, L. 1911; re-en. Sec. 5375, R. C. M. 1921.

5376. Tenure of office—expiration of term. The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in May of the year following their election. At the first regular city election held in the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than twenty-five thousand. The mayor elected at such first general city election shall hold office for two years; one of the councilmen elected at such first city election shall hold office for one year; and the other of such councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; a mayor and four councilmen shall be elected in cities having a population of twenty-five thousand or more; and the mayor elected at such first general city election shall hold office for two years. Two of the councilmen elected at such first general city election shall hold office for one year, and the other two of the councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; and the terms of office of the mayor and all councilmen thereafter elected shall be two years.

The councilmen elected at the first general city election shall decide by lot in such manner as they may select, which thereof shall hold the office of councilman the term of which expires one year thereafter, and which thereof shall hold the office of councilman, the term of which expires two years thereafter.

History: En. Sec. 11, Ch. 57, L. 1911; re-en. Sec. 5376, R. C. M. 1921.

5377. Nomination of candidates—primary election. Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the second Monday

preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy in substantially the following form:

State of Montana, .

County of

}

ss.

I,, being first duly sworn, say that I reside at street, city of, county of, state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the Monday of, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by
..... on this day of, 19.....

(Signed).....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of
....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the Monday of, 19..... We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors.	Number.	Street.
.....
.....

Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballot shall be printed upon plain substantial, white paper, and shall be headed:

Candidates for nomination for mayor and councilmen of the city of
 at the

Primary Election;

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form: (Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions).

Official Primary Ballot.

Candidates for nomination for mayor and councilmen of the city of
 at the

Primary Election.

For Mayor.

(Name of candidate.)

(Vote for one.)

For councilman.

(Name of candidate.)

(Vote for (Giving number to be voted for)).

Official ballot attest:

(Signature)

City Clerk.

Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 706 of these codes, and the provisions of sections 707 to 714, inclusive, of these codes shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count

the ballots and ascertain the number of votes cast in such precinct for each of the candidates for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made. If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal election, the four persons receiving the highest number of votes shall be the candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen, and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R. C. M. 1921.

5377.1. Receipt of majority of all votes cast at primary election elects candidate and dispenses with general election, when. Whenever, in any city operating under a commission form of government, at a primary election held in accordance with section 5377, a councilman or councilmen or a mayor and councilman or councilmen are to be elected, one person or candidate for any office to be filled shall receive a majority of all votes cast for such office, then such person or persons shall be deemed duly elected to the respective office or offices for which he or they receive such major-

ity vote. If at such primary election more than two (2) persons are candidates for the same office and no one person receives a majority of all votes cast for such office then the names of the two persons receiving the highest number of votes shall be placed upon the general municipal election ballot under the provisions of section 5377. If, in any year, all officers to be elected are thus elected by a majority vote at such primary election, then, in that event, no general municipal election shall be held in said city for said year.

History: En. Sec. 1, Ch. 13, L. 1933.

5378. Penalty for working for candidate. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars or be imprisoned in the county jail not exceeding thirty days.

History: En. Sec. 13, Ch. 57, L. 1911; re-en. Sec. 5378, R. C. M. 1921.

5378.1. Fees for filing for office. Every candidate for mayor and every candidate for councilman in cities operating under the commission form of government shall, at the time of filing his nominating petition pay the following fees to the city clerk as filing fee: A candidate for mayor shall pay twenty dollars (\$20.00), and a candidate for councilman shall pay fifteen dollars (\$15.00).

History: En. Sec. 1, Ch. 137, L. 1933.

5379. Bribery—false answers concerning qualifications of elector—voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person wilfully voting or offering to vote at such election who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars; and be imprisoned in the county jail not less than ten nor more than ninety days.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R. C. M. 1921.

5380. City to be governed by mayor and councilmen—right to vote. Every city shall be governed by a mayor and councilmen, as provided in section 5374 of this code, each of whom shall have the right to vote on all questions coming before the council.

History: En. Sec. 15, Ch. 57, L. 1911; re-en. Sec. 5380, R. C. M. 1921.

5381. Quorum of councilmen—recording votes and proceedings. In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum; and the affirmative vote of the mayor and one councilman, or the affirmative vote of two councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure, unless a greater number is provided for in this act.

In cities having a mayor and four councilmen, the mayor and two councilmen, or three councilmen, shall constitute a quorum, and the affirmative vote of the mayor and two councilmen, or the affirmative vote of three councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure, unless a greater number is provided for in this act.

Upon every vote the ayes and nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 16, Ch. 57, L. 1911; re-en. Sec. 5381, R. C. M. 1921.

5382. Rights and powers of mayor—approval of measures. The mayor shall preside at all meetings of the council; he shall have the same power to vote as other members of the council; he shall have no power to veto any measure; but every resolution or ordinance passed by the council must be signed by the mayor, or by two councilmen, and must be recorded before the same shall be in force.

History: En. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R. C. M. 1921.

5383. Powers of council—departments of government. The council shall have and possess and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed, and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of water-works trustees, board of library trustees, attorney, assessor, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

The executive and administrative powers, authority, and duties in such cities shall be distributed into and among departments as follows:

In cities having a mayor and two councilmen, into three departments—

1. A department of accounts, finance, and public property;
2. A department of public safety and charity;
3. A department of streets, public improvements, and parks.

In cities having a mayor and four councilmen, into five departments—

1. A department of public affairs;
2. A department of accounts and finance;
3. A department of public safety and charity;
4. A department of street and public improvements;
5. A department of parks and public property.

The council shall determine the powers and duties to be performed by each department of the city; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to

perform duties in two or more departments; and may make such rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R. C. M. 1921.

5384. Supervisory powers of mayor and councilmen—election and removal of officers—police judge. In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate, by majority vote, one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

The council shall at its first regular meeting after the election of its members, or as soon thereafter as practicable, elect by majority vote the following officers: A city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance, and which may be necessary to the proper and efficient conduct of the affairs of the city; provided, however, that the council, may, by ordinance, consolidate any of the offices the election to which is made by the council, and may require any officer elected by the council to perform the duties of any other officer; and shall appoint a police judge with the authority now conferred by existing laws. Any officer or assistant, elected or appointed by the council, may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this act.

History: En. Sec. 19, Ch. 57, L. 1911; re-en. Sec. 5384, R. C. M. 1921.

5385. Creation or discontinuance of other offices—compensation. The council shall have power from time to time to create, fill, and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and, by majority vote of all the members, remove any such officer or employee except as otherwise provided for in this act; and may, by resolution or otherwise, prescribe, limit, or change the compensation of such officers or employees.

History: En. Sec. 20, Ch. 57, L. 1911; re-en. Sec. 5385, R. C. M. 1921.

5386. Place of office of councilmen—salaries and compensation. The council shall have their office at the city hall, and their total compensation shall be as follows: In cities of the third class having a population of less than three thousand, the annual salary of the mayor shall be six hundred dollars, and the annual salary of each councilman shall be five hundred dollars; in cities of the third class having a population of three thousand or more, the annual salary of the mayor shall be one thousand dollars, and the annual salary of each councilman shall be nine hundred

dollars; in cities of the second class, the annual salary of the mayor shall be one thousand six hundred and fifty dollars, and the annual salary of each councilman shall be one thousand five hundred dollars; in cities of the first class having a population of less than thirty thousand, the annual salary of the mayor shall be three thousand dollars, and the annual salary of each councilman shall be two thousand five hundred dollars; in cities of the first class having a population of thirty thousand and less than fifty thousand, the annual salary of the mayor shall be four thousand dollars, and the annual salary of each councilman shall be three thousand dollars; and in cities of the first class having a population of fifty thousand or more, the annual salary of the mayor shall be four thousand five hundred dollars, and the annual salary of each councilman shall be three thousand five hundred dollars.

Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the official publication of the census showing such advance in class or increase in population.

Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

The salary or compensation of all other employees of such city shall be fixed by the council, and shall be payable monthly, or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R. C. M. 1921.

5387. Meetings of council—vice-president. Regular meetings of the council shall be held on the first Monday after the election of councilmen, and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

The mayor shall be president of the council and shall preside at its meetings, and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council, and in case of a vacancy in the office of mayor, or the absence or inability of the mayor, he shall perform the duties of the mayor.

History: En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R. C. M. 1921.

5388. Ordinances and franchises—how adopted or granted. Every ordinance or resolution appropriating money, or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended, except by ordinance, and every franchise

or grant for interurban or street railways, gas, or water-works, electric light, or power plant, heating plant, telegraph or telephone systems, or other public service utilities, or renewal or extension of any such franchise or grant within such city, must be authorized or approved by a majority of the electors voting thereon at a general or special election, as provided in sections 5075, 5076, and 5077 of this code.

History: En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388 R. C. M. 1921.

Operation and Effect

The fact that a city has adopted the commission form of government does not

render an ordinance or resolution, enacted as in this section directed, any the less indispensable as a part of the proceedings for the creation of an improvement district. *Shapard v. City of Missoula*, 49 M 269, 280, 141 P 544.

5389. Officers not to be interested in contracts, receive passes, or do electioneering. No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or materials, supplies, or services to be furnished or performed for the city; and no such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gas-works, water-works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city, any interurban railway, street railway, gas-works, water-works, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly, from any such person, firm, or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views, or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R. C. M. 1921.

5390. Civil service. Immediately after organizing, the council shall, by ordinance, appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each suc-

ceeding council shall, as soon as practicable after organizing, appoint one commissioner for six years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than three years next preceding their appointment.

The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, and to obey the laws, and to aid to secure and maintain an honest and efficient force, free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

Said commission shall, on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical, and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who, according to the records, have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed thirty days.

All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall, within twenty-four hours thereafter, report such suspension or discharge, and the reason therefor, to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension, according to the facts. Such employee (or

the officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

The council shall have the power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect, and under the same penalties, as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time; and said council may prescribe such rules and regulations for the proper conduct of the business of the said commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and restrictions on payment to persons improperly employed.

The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil service commission.

The provisions of this section shall apply to all appointive officers and employees of such city, except those especially named in section 5384 of this code, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations.

It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

Every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in the daily newspaper of general circulation, or weekly, if there be no daily newspaper published, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section shall be a misdemeanor, and give ground for the removal from office.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R. C. M. 1921.

on at least two days' notice. State ex rel. Lease v. Wilkinson et al., 59 M 327, 333, 196 P 878.

Operation and Effect

A police officer may be suspended or discharged for neglect of duty or disobedience of orders by the chief of police under this section, subject to review by the superintendent of the police department, from whose order of approval the accused may appeal to the city council; or by the council under sections 5099 and 5100, upon charges filed with it, a copy of which must be furnished to him, after a trial had

Id. Where an acting chief of police merely recommended to the council that a police officer be removed from office, but did not actually suspend or discharge him, in conformity with this section, there was no order from which he could appeal, and his attempted appeal was ineffectual for any purpose.

The chief of a fire department of a city operating under the commission form of

government was removed by the council, his name, however, being restored to the roll of members, thus entitling him to the safeguards afforded him as such member under the civil service rules of the firemen's act. He later was suspended under this section, but a hearing on his appeal

was not accorded him. Held, that failure to hear his appeal rendered the order of suspension of no effect, automatically reinstated him, and entitled him to compensation during the period of his suspension. *State v. Dryburgh*, 62 M 36, 45, 203 P 508.

5391. Publication of report by council—examination of accounts. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to the persons who shall apply therefor at the office of the city clerk. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditure.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R. C. M. 1921.

5392. Revision of appropriations made by former council. If, at the beginning of the term of office of the first council elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations, and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911; re-en. Sec. 5392, R. C. M. 1921.

5393. Rules for construction of law—definition of terms. In the construction of this act the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to the context of the statute;

1. The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this act;

2. When an office or officer is named in any law referred to in this act, it shall, when applied to cities under this act, be construed to mean the office or officer having the same function or duties under the provisions of this act, or under ordinances passed under authority thereof;

3. The words "franchise" or "right" shall include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right;

4. The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

History: En. Sec. 28, Ch. 57, L. 1911; re-en. Sec. 5393, R. C. M. 1921.

5394. Recall of elective officers. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent. of all qualified electors registered for the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the

removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other elections.

As far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to a vote at said special election, equal in number to at least ten per cent. of the entire number of persons registered to vote at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in section 5377 of this code, so far as the same is applicable, substituting the word "special" for the word "primary" in such statement and petition, and stating therein that such person is a candidate for election instead of nomination. The ballot for such special election shall be in substantially the following form:

Official Ballot.

Special election for the balance of the unexpired term of.....
as for

(Vote for one only.)

(Name of candidates.)

Name of present incumbent.

Official ballot attest.

(Signature).....

City Clerk.

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of the election, the office shall be deemed vacant. If the incumbent receive the highest number of votes, he shall continue in office. The said method of removal shall be cumulative, and additional to the methods heretofore provided by law.

History: En. Sec. 29, Ch. 57, L. 1911; amd. Sec. 3, Ch. 2, L. 1915; re-en. Sec. 5394, R. C. M. 1921.

5395. Ordinance—how submitted—petition and election. Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required. The signature, verification, inspection, certification, amendment, and submission of such petition shall be the same as provided for petition under the preceding section. If the petition accompanying the proposed ordinance be signed by electors equal in number to twenty-five per centum of the entire number of persons registered to vote at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either:

(a) Pass each ordinance without alteration within twenty days after the attachment of the clerk's certificate to the accompanying petition; or,

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed by law within thirty days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted to the vote of the electors of such city.

But if the petition is signed by not less than ten nor more than twenty-five per centum of the electors, as above defined, then the council shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring after the clerk's certificate of sufficiency is attached to said petition.

The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by the petition of which shall be adopted by a vote of the people cannot be repealed or amended except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section; but there shall

not be more than one special election in any period of six months for such purposes.

The council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers published in such city, and if there be none, then one time in each weekly newspaper published therein; such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R. C. M. 1921.

5396. Taking effect and suspension of ordinances. No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this act, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency, and is passed by a two-thirds vote of the council, shall go into effect before ten days from the time of its final passage; and if, during said ten days, a petition signed by electors of the city equal in number to at least twenty-five per centum of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by subdivision (b) of the preceding section, to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of the preceding section, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

History: En. Sec. 31, Ch. 57, L. 1911; re-en. Sec. 5396, R. C. M. 1921.

5397. Abandonment of commission form. Any city which shall have operated for more than one year under the provisions of this act may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population.

Upon the petition of not less than twenty-five per cent. of the electors of such city registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the city of (name the city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a

city under the general law governing cities of like population; or if formerly organized under special charter shall resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such city, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided for by section 5394 of this code, in so far as the provisions thereof are applicable; or if now organized under special charter, may resume said special charter. Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of two years.

History: En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. 5397, R. C. M. 1921.

5398. Requirements of petitions. Petition provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age, and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

History: En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R. C. M. 1921.

5399. Effect of act upon existing laws. All acts and parts of acts, and all laws, not inconsistent with any of the provisions of this act, now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect, and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

History: En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R. C. M. 1921.

CHAPTER 408

COMMISSION-MANAGER PLAN OF GOVERNMENT

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5400. Any city may reorganize under commission-manager form. Any municipality may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 152, L. 1917; re-en. Sec. 5400, R. C. M. 1921.

Municipal Budget Law Not Applicable to Cities Under Commission-Manager Form

The municipal budget law (sections

5083.1-5083.12) does not apply to cities operating under the commission-manager form of government. Attorney General's Opinions, No. 364, Vol. 15.

5401. Submission of question to electors—petition and order of election. Upon a petition being filed with the city or town council, signed by not less than twenty-five per cent. of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this act be submitted to the qualified electors of such municipality, said city or town council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this act shall be submitted to the qualified electors of such municipality.

Such order of the city or town council shall specify therein the time when such election shall be held, which must be within ninety days from the date of filing of such petition.

History: En. Sec. 2, Ch. 152, L. 1917; re-en. Sec. 5401, R. C. M. 1921.

5402. Proclamation of election. Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said municipality, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917; re-en. Sec. 5402, R. C. M. 1921.

5403. Ballots—form. At such election, the ballots to be used shall be printed on plain white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteen legislative assembly," and shall be substantially in the following form:

For reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteen legislative assembly.

Against reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly.

Such election shall be conducted, and vote canvassed and result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R. C. M. 1921.

5404. Certificate of result of election—election not to be held within two years after failure to adopt. If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state and to the county clerk and recorder, each a certificate stating that such proposition was adopted. If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of two years from the date of the last submission.

History: En. Sec. 5, Ch. 152, L. 1917; re-en. Sec. 5404, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1923.

5405. Special election for electing commissioners. If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within one week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such municipality if there be such, otherwise for two successive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

History: En. Sec. 6, Ch. 152, L. 1917; re-en. Sec. 5405, R. C. M. 1921; amd. Sec. 2, Ch. 31, L. 1923.

5406. Manner of conducting election—canvassing votes. Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R. C. M. 1921.

5407. Laws governing city—ordinances—territorial limits and property. All laws governing municipalities of like population, and not inconsistent with the provisions of this act, shall apply to and govern municipalities organized under this act. All by-laws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this act. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description

which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change, unless otherwise provided for in this act.

History: En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R. C. M. 1921.

References

City of Bozeman v. Merrell, 81 M 19, 26, 261 P 876.

5408. Organization of communities or groups of communities as municipality—election proclamation—election of commissioners. Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part, or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this act, the board of county commissioners of such county may, or upon the presentation of a petition signed by not less than twenty-five per cent. of the qualified electors in such community or group of communities must, issue a proclamation ordering a special election to be held, at which election the question of the organization of such community or group of communities as a municipality under the provisions of this act shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be within ninety days from the date of filing such petition, and shall define the boundaries of said proposed municipal district, which shall include all such communities and cities, and such additional adjacent territory as shall, in the judgment of the board of county commissioners, provide for future urban growth.

If a majority of the legal voters at said election vote in favor of the organization of such municipal district, or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said elections, and immediately thereafter shall give notice for thirty days in a newspaper published within the proposed municipal district, or if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for six months are qualified electors. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner prescribed by law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec. 5408, R. C. M. 1921.

5409. Powers of municipalities under commission-manager plan. The inhabitants of any municipality, coming under the provisions of this act, as its limits now are, or may hereafter be, shall be a body politic and cor-

porate and have a corporate name, and as such shall have perpetual succession, and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest, or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality, and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings, and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices, and fix the salaries and compensations of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality, and for the performance of the functions thereof. The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this act, or when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917; re-en. Sec. 5409, R. C. M. 1921.

Operation and Effect

Held, that the powers of a city operating under the commissioner-manager plan granted by this section, with respect to punishments of violations of its ordin-

ances, are the same as and no greater than those granted by section 5039, to cities generally. *City of Bozeman v. Merrell*, 81 M 19, 26, 261 P 876.

References

City of Bozeman v. Nelson, 73 M 147, 155 et seq., 237 P 528.

5410. Form of government to be known as "Commission-manager plan"—composition of commission—powers. The form of government provided for in this act shall be known as the "commission-manager plan," and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided. The commission shall consist of three commissioners for all municipalities having a population less than twenty-five thousand, and five commissioners for all cities having

a population of twenty-five thousand or more. The commission shall constitute the governing body, with powers as hereinafter provided, to pass ordinances, adopt regulations, and appoint a chief administrative officer to be known as the "City manager," and exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R. C. M. 1921.

5411. Qualification of commissioners—tenure of office—expiration of terms. The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this act shall cease and terminate, and the terms of office of all their appointed officers, and of all of the employees of such city or town, shall cease and terminate as soon as the commissioners shall by resolution declare.

All commissioners shall serve for a term of four years and until their successors are elected and have qualified; except that at the first election the two candidates having the highest number of votes shall hold office for a period of four years, less the time elapsed since the 31st day of December of the odd numbered year last preceding. The terms of office of all other candidates shall expire on the 31st day of December in any odd numbered year following the special election provided for in this act, at which the first commissioners are elected.

History: En. Sec. 13, Ch. 152, L. 1917; re-en. Sec. 5411, R. C. M. 1921; amd. Sec. 3, Ch. 31, L. 1923.

5412. Filling of vacancies in commission. Vacancies in the commission shall be filled by the commission for the remainder of the unexpired term, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: En. Sec. 14, Ch. 152, L. 1917; re-en. Sec. 5412, R. C. M. 1921.

5413. Qualifications of commissioners—holding other public office forbidden—interest in contracts not allowed—accepting gratuities forbidden. Members of the commission shall be residents of the city or town and have the qualifications of electors, and own real estate situated therein to the assessed value of not less than one thousand dollars. Commissioners and other officers and employees shall not hold any other public office or employment, except in the state militia, as school trustees, or notary publics, and shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality. Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary

removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R. C. M. 1921; amd. Sec. 4, Ch. 31, L. 1923.

5414. Nomination of candidates—primary election. Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least ten days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana, }
County of } ss.

I,, being first duly sworn, say that I reside at street, (city, town) of, county of, state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by.....
.....on this.....day of....., 19.....

(Signed).....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last

Tuesday of August, 19..... We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors.	Number.	Street.
(Space for Signatures.)		

State of Montana, }
 County of } ss.

....., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed).....

Subscribed and sworn to before me this.....day
 of....., 19.....

.....,
 Notary Public.

This petition, if found insufficient, shall be returned to.....
at No. street,
, Montana.

Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed, and authenticated with a facsimile of his signature.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R. C. M. 1921.

5415. Ballots—form, contents and distribution—qualification of electors—conduct of election. All ballots used in all elections held under authority of this act shall be without party mark or designation. The ballots shall be printed on plain, substantial white paper.

Except that the crosses here shown shall be omitted, and that in place of the names of persons here shown, there shall appear the names of the persons who are candidates for nomination, the primary ballots shall be substantially as hereinafter designated. Primary, regular and special election ballots provided under authority of this act for the nomination or election of commissioners shall not bear the name of any person or persons or any issue other than those of candidates for the nomination or election to the office of commissioner.

Official Primary Ballot.

Vote for (insert here a number equal to the number of persons to be elected to the office of commissioner at the next regular municipal election.)

If you wrongly mark, tear or deface this ballot, return it and obtain another.

Candidates for nomination to the office of commissioner at the primary election.

<input checked="" type="checkbox"/>	John Doe
<input checked="" type="checkbox"/>	Henry Smith
<input checked="" type="checkbox"/>	George Jones
<input checked="" type="checkbox"/>	James Richards
<input checked="" type="checkbox"/>	Richard Doe

Official Ballot Attest:

(Signature)

Clerk of the Commission.

Having caused said ballots to be printed, the clerk of the commission shall cause to be delivered at each polling place a number of said ballots, ten per cent in excess of the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election, shall be qualified to vote at such primary election, and any person offering to vote, may be orally challenged by any elector of the municipality upon any or all grounds set forth and specified in section 706, and the provisions of sections 707, 708, 709, 710, 711, 712, 713, and 714, shall apply at all challenges made at such election. Judges of election shall immediately upon the closing of the polls, count the ballots and ascertain the number of such votes cast in such precinct for each of the candidates, and make return thereof to the clerk of the commission upon proper blanks to be furnished by the clerk of the commission within twelve hours of the closing of the polls. Not later than the first legal day after he shall have received such returns, the clerk of the commission shall canvass said returns so received from all the polling precincts and shall make and publish in all the newspapers in said municipality, at least once, the result thereof. Said canvass by the clerk of the commission shall be made publicly.

The candidates for nomination to the office of commissioner who shall have received the greatest vote in such primary election shall be placed on the ballot at the next regular municipal election, in number not to exceed double the number of vacancies in the commission to be filled.

Except as otherwise in this act provided all electors of municipalities under this act, who, by ordinances governing cities and towns incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities or towns, shall be qualified to vote at all elections under this

act; and the ballots to be used at such general municipal elections, shall be in the same general form as for such primary election so far as applicable, and in all elections in such municipalities, the election precincts, voting places, method of conducting the elections, canvassing of votes and announcing the results, shall be the same as by law provided for the election of officers in such cities or towns so far as the same are applicable and not inconsistent with the provisions of this act.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R. C. M. 1921; amd. Sec. 5, Ch. 31, L. 1923.

5416. Arrangement of names of candidates on ballot. The names of candidates on all ballots used in any election held under the authority of this act shall be printed in rotation, as follows:

The ballot shall be printed in as many series as there are candidates for the office of commissioner. The whole number of ballots to be printed shall be divided by the number of series, and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots, the names of candidates shall be arranged in alphabetical order. After printing the first series, the first name shall be placed last and the next series printed, and the process shall be repeated until each name in the list shall have been printed first an equal number of times. The ballots so printed shall then be combined in tablets, so as to have the fewest possible ballots having the same order of names printed thereon together in the same tablet.

History: En. Sec. 18, Ch. 152, L. 1917; re-en. Sec. 5416, R. C. M. 1921.

5417. Date of holding regular elections—special elections. A regular election for the choice of commissioners, provided for in this act, shall be held on the first Tuesday after the first Monday in November of any odd-numbered year, and on the first Tuesday after the first Monday in November in each second year thereafter. Elections so held shall be known as regular municipal elections. All other elections held under the provisions of this act, excepting those for the nomination of candidates for the office of commissioner, shall be known as special municipal elections.

History: En. Sec. 19, Ch. 152, L. 1917; re-en. Sec. 5417, R. C. M. 1921.

5418. Filing of election expenses of candidates—penalty for violations. Every candidate for commissioner shall, within thirty (30) days after the election, file with the clerk of the commission his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section, shall be a misdemeanor and if committed by a successful candidate, give ground for the removal from office.

History: En. Sec. 20, Ch. 152, L. 1917; re-en. Sec. 5418, R. C. M. 1921; amd. Sec. 6, Ch. 31, L. 1923.

5419. Recall of commissioners—petition for recall. Any or all of the commissioners provided for in this act may be removed from office by the electors. The procedure to effect such removal, shall be as follows:

A petition demanding that the question of removing such officers be submitted to the electors shall be filed with the clerk of the commission.

Such petition for the recall of any or all of the commissioners shall be signed by at least twenty-five per cent. of the total number of registered voters in the municipality.

The signature to such petition need not be appended to any one paper.

History: En. Sec. 21, Ch. 152, L. 1917; re-en. Sec. 5419, R. C. M. 1921.

5420. Issuance of petition papers. Petition papers shall be procured only from the clerk of the commission, who shall keep a sufficient number of such blank petitions on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more qualified electors and filed with the clerk of the commission, stating the name and the office of the officer or officers sought to be removed. The clerk of the commission, upon issuing any such petition papers to an elector, shall enter in a record, to be kept in his office, the name of the elector to whom issued, the date of such issuance, and the number of papers issued, and shall certify on such papers the name of the elector to whom issued, and the date issued. No petition papers so issued shall be accepted as part of the petition unless it bears such certificate of the clerk of the commission, and unless it be filed as provided herein.

History: En. Sec. 22, Ch. 152, L. 1917; re-en. Sec. 5420, R. C. M. 1921.

5421. Signatures and affidavit to petition papers. Each signer of a recall petition shall sign his name in ink or indelible pencil, and shall place thereon, after his name, his place of residence by street and number. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper was made in his presence and is the genuine signature of the person whose name it purports to be.

History: En. Sec. 23, Ch. 152, L. 1917; re-en. Sec. 5421, R. C. M. 1921.

5422. Assembling and filing of petition papers. All papers comprising a recall petition shall be assembled and filed with the clerk of the commission as one instrument within thirty days after the filing with the clerk of the commission of the affidavit stating the name and the office of the officer sought to be removed.

History: En. Sec. 24, Ch. 152, L. 1917; re-en. Sec. 5422, R. C. M. 1921.

5423. Notification of officer—recall election. The clerk of the commission shall at once submit the recall petition to the commission, and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy nor more than eighty days after the petition has been presented to the commission, at the same time as any other general or special election held within such period; but if no such election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

History: En. Sec. 25, Ch. 152, L. 1917; re-en. Sec. 5423, R. C. M. 1921.

5424. Ballots at recall election—requirements—nomination of candidates to fill vacancies. The ballots at such recall election shall conform to the following requirements:

With respect to each person whose removal is sought, the question shall be submitted, "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there shall be printed on the ballots the two propositions, in the order set forth:

"For the recall (name of person).

Against the recall (name of person)."

Immediately to the left of the proposition shall be placed a square in which the electors, by making a cross mark (X), may vote for either of such propositions. Under said questions shall be placed the names of candidates to fill the vacancy or vacancies. The name of the officer or officers whose removal is sought shall not appear on the ballot as a candidate or candidates to succeed himself or themselves.

Before any such recall election for the removal of commissioners shall be had, there shall be nominated candidates to fill the vacancy or vacancies, the nominations therefor to be made by petition, which petition for each candidate shall be signed by at least twenty-five registered electors, and shall be filed at least thirty days prior to the date fixed for holding such recall election; and the form and requirements for said petition shall be the same as hereinbefore provided in the case of primary nominations.

History: En. Sec. 26, Ch. 152, L. 1917; re-en. Sec. 5424, R. C. M. 1921.

5425. Effect of majority vote for or against recall. Should a majority of the votes cast at a recall election be against the recall of the officer named on the ballot, such officer shall continue in the office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at a recall election shall be for the recall of the officer named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office.

History: En. Sec. 27, Ch. 152, L. 1917; re-en. Sec. 5425, R. C. M. 1921.

5426. Limitation upon time of filing recall petition. No recall petition shall be filed against a commissioner within six months after he takes his office, nor, in case of an officer reelected in a recall election, until six months after that election.

History: En. Sec. 28, Ch. 152, L. 1917; re-en. Sec. 5426, R. C. M. 1921.

5427. Working for candidate forbidden. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both such fine and imprisonment.

History: En. Sec. 29, Ch. 152, L. 1917; re-en. Sec. 5427, R. C. M. 1921.

5428. Bribery—false answers concerning qualifications of elector—voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other

consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person wilfully voting or offering to vote at such election, who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than ten nor more than ninety days, or both such fine and imprisonment.

History: En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R. C. M. 1921.

5429. Proposed ordinances—how submitted—requirements of petition to submit. Any proposed ordinance may be submitted to the commission by petition signed by at least ten per cent. of the total number of registered voters in the municipality. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full, and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition, and shall constitute a committee of the petitioners for the purposes hereinafter named.

History: En. Sec. 31, Ch. 152, L. 1917; re-en. Sec. 5429, R. C. M. 1921.

5430. Signatures and affidavit to petitions. Each signer of a petition shall sign his name in ink or indelible pencil, and shall place on the petition papers, after his name, his place of residence by street and number. The signatures of any such petition papers need not all be appended to one paper, but to each such paper there shall be attached an affidavit by the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper is the genuine signature of the person whose name it purports to be, and was made in the presence of the affiant.

History: En. Sec. 32, Ch. 152, L. 1917; re-en. Sec. 5430, R. C. M. 1921.

5431. Assembling and filing of petition papers—hearing upon proposed ordinances—submission to electors. All papers comprising a petition shall be assembled and filed with the clerk of the commission as one instrument, and when so filed, the clerk of the commission shall submit the proposed ordinance to the commission at its next regular meeting. Provision shall be made for public hearings upon the proposed ordinances.

The commission shall at once proceed to consider it, and shall take final action thereon within thirty days from the date of submission. If the commission rejects the proposed ordinance, or passes it in a different form from that set forth in the petition, the committee of the petitioners may require it to be submitted to a vote of the electors in its original form, or that it be submitted to a vote of the electors with any proposed change, addi-

tion, or amendment, if a petition for such election is presented bearing additional signatures of fifteen per cent. of the electors of the city or town.

History: En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R. C. M. 1921.

5432. Submission of petition and proposed ordinance to clerk. When an ordinance proposed by petition is to be submitted to a vote of the electors, the committee of the petitioners shall certify that fact and the proposed ordinance to the clerk of the commission within twenty days after the final action on such proposed ordinance by the commission.

History: En. Sec. 34, Ch. 152, L. 1917; re-en. Sec. 5432, R. C. M. 1921.

5433. When proposed ordinance is to be submitted to electors. Upon receipt of the certificate and certified copy of the proposed ordinance, the clerk shall certify the fact to the commission at its next regular meeting. If an election is to be held not more than six months nor less than thirty days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall then be submitted to a vote of the electors. If no such election is to be held within the time aforesaid, the commission shall provide for submitting the proposed ordinance to the electors at a special election.

History: En. Sec. 35, Ch. 152, L. 1917; re-en. Sec. 5433, R. C. M. 1921.

5434. Contents of ballot—when proposed ordinance becomes effective. The ballots used when voting upon any such proposed ordinance shall state the title of the ordinance to be voted on, and below it the two propositions, "For the ordinance," and "Against the ordinance." Immediately at the left of each proposition there shall be a square, in which, by making a cross (X), the voter may vote for or against the proposed ordinance. If a majority of the electors voting on any such proposed ordinance shall vote in favor thereof, it shall thereupon become an ordinance of the municipality.

History: En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R. C. M. 1921.

5435. Repealing ordinances—publication, amendment, and repeal of initiated ordinances. Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding section for initiating ordinances. Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission as in the case of other ordinances.

History: En. Sec. 37, Ch. 152, L. 1917; re-en. Sec. 5435, R. C. M. 1921.

5436. When ordinances of commission take effect—petition for repeal suspends effect unless law is complied with. No ordinance passed by the commission, unless it be an emergency measure, shall go into effect until thirty days after its final passage by the commission. If at any time within the said thirty days, a petition signed by twenty-five per cent. of the total number of registered voters in the municipality be filed with the clerk of the commission, requesting that any such ordinance be repealed or submitted to a vote of the electors, it shall not become operative until the steps taken herein shall have been taken.

History: En. Sec. 38, Ch. 152, L. 1917; re-en. Sec. 5436, R. C. M. 1921.

5437. Reconsideration of ordinance—submission to electors—failure to approve operates as repeal. The clerk of the commission shall deliver the

petition to the commission, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed, the commission shall provide for submitting to a vote of the electors, and in so doing, the commission shall be governed by the provisions herein contained, respecting the time of submission and manner of voting on ordinances proposed to the commission by petition. If, when submitted to a vote of the electors, any such ordinance be not approved by a majority of those voting thereon, it shall be deemed repealed.

History: En. Sec. 39, Ch. 152, L. 1917; re-en. Sec. 5437, R. C. M. 1921.

5438. Contents and requirements of referendum petitions—ballots. Referendum petitions need not contain the text of the ordinance, the repeal of which is sought, but shall be subject in all other respects to the requirements for petitions submitting proposed ordinances to the commission. Ballots used in referendum elections shall conform in all respects to those provided for in section 5434 of this code.

History: En. Sec. 40, Ch. 152, L. 1917; re-en. Sec. 5438, R. C. M. 1921.

5439. Other ordinances subject to referendum. Ordinances submitted to the commission by initiative petition and passed by the commission without change, or passed in an amended form and not required to be submitted to a vote of the electors by the committee of the petitioners, shall be subject to a referendum in the same manner as other ordinances.

History: En. Sec. 41, Ch. 152, L. 1917; re-en. Sec. 5439, R. C. M. 1921.

5440. Highest affirmative vote prevails when referendum ordinances conflict. If the provisions of two or more ordinances adopted or approved at the same election conflict, the ordinance receiving the highest affirmative vote shall prevail.

History: En. Sec. 42, Ch. 152, L. 1917; re-en. Sec. 5440, R. C. M. 1921.

5441. Emergency ordinances subject to referendum—rules applicable. Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: En. Sec. 43, Ch. 152, L. 1917; re-en. Sec. 5441, R. C. M. 1921.

5442. Ordinances providing for expenditures, bond issues, public improvements submitted to electors—preliminary steps prior to election—qualifications of electors. In case a petition be filed requiring that a measure passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such expenditure, actual issuance of the bonds, or actual execution of the contract for such improvement, may be taken prior to the election; and at such election only resident tax payers of such city or town whose names as such appear upon the assessment roll and who are also qualified electors of said city or town, shall be entitled to

vote at such election. And at any and all elections in such city or town at which questions relating to bond issues, tax levies, or the expenditure of money shall be submitted, no person shall be entitled to vote unless qualified as in this section provided.

History: En. Sec. 44, Ch. 152, L. 1917; re-en. Sec. 5442, R. C. M. 1921; amd. Sec. 7, Ch. 31, L. 1923.

5443. Oath and bond of commissioners. Every person who has been declared elected commissioner, shall within ten (10) days thereafter take and file with the clerk of the commission his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in such sum as the judge of the district court of the county in which such municipality is situated, not, however, exceeding \$5000.00 for commissioners in cities of the first class and \$3000.00 for commissioners in all other cities and towns, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the clerk and recorder of the county in which such municipality is situated. The premium on such bond as may be required, shall be paid by the municipality.

History: En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R. C. M. 1921; amd. Sec. 8, Ch. 31, L. 1923.

5444. Designation of mayor—procedure in case of tie vote—vacancy in office of mayor—powers and duties of mayor. The mayor shall be that member of the commission, who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission. In event of a vacancy in the office of the mayor, by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred, and perform all duties imposed upon him by this act, the ordinances of the municipality and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R. C. M. 1921; amd. Sec. 9, Ch. 31, L. 1923.

5445. Selection of successor to mayor in event of his recall—mayor when all commissioners are recalled. In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successor shall serve as the mayor.

History: En. Sec. 47, Ch. 152, L. 1917; re-en. Sec. 5445, R. C. M. 1921.

5446. Quorum of commissioners—recording votes and proceedings. In municipalities having three commissioners, two commissioners shall constitute a quorum; and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. In municipalities having five commissioners, three commissioners shall constitute a quorum, and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 48, Ch. 152, L. 1917; re-en. Sec. 5446, R. C. M. 1921.

5447. Compensation of commissioners and mayor. The salary of each commissioner shall be as follows: For each meeting attended, cities or towns with less than twenty-five thousand inhabitants, five dollars; cities with more than twenty-five thousand inhabitants, not to exceed ten dollars; provided, that not more than one fee shall be paid for any one day. The salary of the commissioner acting as mayor shall be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921.

5448. Meetings of commission—unauthorized absence creates vacancy—meetings and minutes to be public—rules and order of business. At ten o'clock a. m. on the first Monday after the first day of January, following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than five thousand inhabitants, they shall meet regularly at least once and not more than four times per month, and in municipalities having more than five thousand inhabitants, they shall meet not less than once every two weeks. Absence from five (5) consecutive regular meetings shall operate to vacate the seat of a member, unless such absence be authorized by the commission.

The commissioner acting as mayor, any two members of the commission or the city manager, may call special meetings of the commission upon at least twelve (12) hours written notice to each member of the commission, served personally on each member or left at his usual place of residence. All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

History: En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R. C. M. 1921; amd. Sec. 10, Ch. 31, L. 1923.

5449. Form of ordinances and resolutions—appropriations—manner of passing and approving—amendments. Each proposed ordinance or resolu-

tion shall be introduced in written or printed form, and shall not contain more than one subject, which shall be clearly stated in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances passed by the commission shall be, "Be it ordained by the commission of the (city or town) of (name of city or town)." The enacting clause of all ordinances submitted by the initiative shall be, "Be it ordained by the people of the (city or town) of (name of city or town)."

No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced, unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members, and filed with the clerk within two days, and by him recorded.

No ordinance or resolution or section thereof shall be revised or amended, unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

History: En. Sec. 51, Ch. 152, L. 1917; re-en. Sec. 5449, R. C. M. 1921; amd. Sec. 11, Ch. 31, L. 1923.

5450. Same—time of taking effect—emergency measures—ordinances which cannot pass as such. All ordinances and resolutions shall be in effect from and after thirty days from the date of their passage by the commission, except as otherwise provided in this act. The commission may, by an affirmative vote of all the members, pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money, or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise, or extension of franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, or right to occupy or use the streets, highways, bridges, or other public places, shall never be passed as an emergency measures.

History: En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R. C. M. 1921.

5451. Appointment of clerk and other officers—duties of clerk. The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission, and shall keep records and perform such other duties as may be required by this act or the commission.

History: En. Sec. 53, Ch. 152, L. 1917; re-en. Sec. 5451, R. C. M. 1921.

5452. Auditing books of account, records, etc.—matters to be included in statement—printing and distribution of report—publication of summary. The commission shall cause a continuous audit to be made of the books of account, records, and transactions of the administrative department of the

municipality. Such audit, during each fiscal year, shall be made by one or more well-qualified accountants. The duty of the auditor or auditors so appointed shall include the certifications of all statements required under section 5466 of this code. Such statements shall include a general balance-sheet, exhibiting the assets and liabilities of the municipality, supported by departmental schedules and schedules for each utility publicly owned or operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classifications, with the last previous year. The report of such audit for each previous year shall be printed and a copy thereof furnished the state bank examiner of Montana, to each member of the commission, and to each citizen who may apply therefor; and a condensed summary thereof shall be published in the manner provided by the commission.

History: En. Sec. 54, Ch. 152, L. 1917; re-en. Sec. 5452, R. C. M. 1921.

5453. Record of ordinances and resolutions, and authorization thereof—publication of number and title. Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every ordinance or resolution shall be published at least once within ten days after its final passage in such manner as is provided in this act.

History: En. Sec. 55, Ch. 152, L. 1917; re-en. Sec. 5453, R. C. M. 1921.

5454. Investigation of financial transactions—powers in conducting investigations—contempt—privilege of witness. The commission, or any committee thereof, duly authorized by the commission so to do, may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official, and by similar investigations may secure information upon any matter. In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence, and for that purpose may issue subpoenas or attachments which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, which may be served and executed by any officer authorized by law to serve subpoenas or other process. If any witness shall refuse to testify to any facts within his knowledge, or to produce any papers or books in his possession, or under his control, relating to the matter under inquiry, before the commission, or any such committee, the commission shall have the power to cause the witness to be punished for contempt. No witness shall be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against him in any criminal prosecution, except for perjury committed upon such inquiry.

History: En. Sec. 56, Ch. 152, L. 1917; re-en. Sec. 5454, R. C. M. 1921.

5455. Appointment of city manager. The commission shall appoint a city manager, who shall be the administrative head of the municipal government, and shall be responsible for the efficient administration of all departments. He shall be appointed without regard to his political beliefs,

and may or may not be a resident of the municipality when appointed. He shall hold office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R. C. M. 1921.

5456. Powers and duties of city manager. The powers and duties of the city manager shall be:

1. To see that the laws and ordinances are enforced;
2. To appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments to be subject to the civil service provisions of this act;
3. To exercise control over all the departments and divisions created herein, or that may hereafter be created by the commission;
4. To attend all meetings of the commission, with the right to take part in the discussions, but having no vote;
5. To recommend to the commission for adoption such measures as he may deem necessary or expedient;
6. To keep the commission fully advised as to the financial condition and needs of the city; and
7. To perform such other duties as may be prescribed by this act, or be required of him by ordinance or resolution of the commission.

History: En. Sec. 58, Ch. 152, L. 1917; re-en. Sec. 5456, R. C. M. 1921.

5457. Salary of city manager. The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917; re-en. Sec. 5457, R. C. M. 1921.

5458. May cause examinations of departments or the conduct of officers or employees—powers in conducting. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person or persons appointed by the city manager to examine the affairs of any department, or the conduct of any officer or employee, shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence, and to cause witnesses to be punished for contempt, as is conferred upon the commission by this act.

History: En. Sec. 60, Ch. 152, L. 1917; re-en. Sec. 5458, R. C. M. 1921.

5459. Administrative departments—power of commission concerning. The following administrative departments are hereby established by this act:

1. Department of law;
2. Department of public service;
3. Department of public welfare;
4. Department of public safety;
5. Department of finance.

The commission may by ordinance discontinue any or several departments, and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917; re-en. Sec. 5459, R. C. M. 1921.

5460. Appointment and removal of directors of departments—powers and duties of directors. The city manager shall appoint a director for each department, as specified herein or as specified by ordinance of the commission, who shall serve until removed by the city manager, or until his successor is appointed and has qualified. Each director shall conduct the affairs of his department in accordance with the rules and regulations made by the city manager, and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R. C. M. 1921.

5461. Municipal plan board—advisory boards. The commission may appoint a municipal plan board, and upon the request of the city manager shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: En. Sec. 63, Ch. 152, L. 1917; re-en. Sec. 5461, R. C. M. 1921.

5462. Department of law. The head of the department of law shall be an attorney at law, who has been admitted to practice in the state of Montana, and shall be known as the city attorney. He shall be the legal advisor of and attorney and counsel for the municipality, and for all the officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the municipality, and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned, and shall indorse on each his approval of the form and correctness thereof. He shall have such other duties and authority as are now conferred upon the city attorney by existing laws. He shall have such number of assistants as the commission by ordinance may authorize.

History: En. Sec. 64, Ch. 152, L. 1917; re-en. Sec. 5462, R. C. M. 1921.

5463. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and water-courses; of boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewerage disposal plants and farms, and all public utilities of the municipality. He shall have charge of the enforcement of all obligations of privately owned

or operated public utilities enforceable by the municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality, and pertaining to the department.

History: En. Sec. 65, Ch. 152, L. 1917; re-en. Sec. 5463, R. C. M. 1921.

5464. Department of public welfare. Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality; the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. He shall have charge of the inspection and supervision of public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health, the prevention and restriction of disease, the prevention, abatement, and suppression of nuisances, and the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic, or threatened epidemic, he may enforce such quarantine regulations as are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, and disease, and other social problems in the community, and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters which affect the public welfare.

The health officer of the municipality shall be under the direction and control of the director of public welfare, and shall enforce all ordinances and laws relating to health, and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers; provided, that regulations affecting the public health additional to those established by general law, and for the violation of which penalties are imposed, shall be enacted by the commission and enforced as provided herein.

History: En. Sec. 66, Ch. 152, L. 1917; re-en. Sec. 5464, R. C. M. 1921.

5465. Department of public safety—police and fire departments. Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair and occupancy of buildings as may be ordained by the commission or established by the general law of the state of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, under such rules and regulations as the director of public safety may prescribe. The provisions of sections 5095 to 5108, both inclu-

sive, and of section 5007, shall not be applicable to cities and towns operating under the plan of government provided for in this act. The police force shall be composed of a chief of police and such officers, patrolmen and other employees as the city manager may from time to time determine. In case of riot, emergency, at time of elections or similar occasions, the director of public safety may appoint additional patrolmen and officers for temporary service who need not be in the classified service.

No person shall act as special policeman, special detective or other special police officer for any purpose whatsoever, except upon the written authority of the director of public safety. Such authority shall be exercised only under the direction and control of the chief of police and for a specified time.

The fire chief shall have exclusive control of the stationing and transfer of all firemen and other officers and employees constituting the fire force under such rules and regulations as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firemen and employees as the city manager may from time to time determine. In case of riot, conflagration or emergency, the director of public safety may appoint additional firemen and other officers for temporary service who need not be in the classified service.

The chief of police and fire chief shall have the right to suspend any of the officers and employees in the police and fire department, who may be under their management and control, for incompetency, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority or for any other just and reasonable cause. When such suspension is made, the chief of police or fire chief shall forthwith report such suspension in writing to the director of the department of public safety, together with the facts and reasons for such suspension. Upon receipt of said notice the director of public safety shall fix a date and time for hearing such suspension, which shall be within thirty days from the receipt of such notice, and cause to be given to the person suspended and the officer suspending at least three days' notice thereof. Upon a hearing of said matter before the director of public safety, he shall be authorized to administer oaths, take testimony and to render a decision thereon either sustaining the order of suspension or overruling the same. An appeal may be taken within ten days from the date of judgment from said decision of the director of public safety to the city manager by the party suspended or the officer making the suspension. If no appeal is taken, the judgment rendered by the director of public safety shall be final, except that the city manager shall in all cases have the authority to remove any employee or officer of the police or fire department. If an appeal is taken to the city manager, he shall fix a date and time for hearing the same within thirty days of the receipt of such notice of appeal and give at least three days notice thereof to the parties, and he shall have the right to swear witnesses, take testimony and render judgment therein and his judgment shall be final.

The city manager shall have the exclusive right to suspend or dismiss the chief of police and the fire chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority,

or for any other just and reasonable cause. If either of such chiefs be so suspended or dismissed, the city manager shall forthwith certify the fact, together with the cause of suspension or dismissal to the commission, who, if demand therefor be made by the person so suspended or dismissed within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.

The commission may provide by general ordinance for the relief out of the police or fire funds of members of the division of police and fire temporarily or permanently disabled in the discharge of their duty. Nothing herein shall impair, restrict or repeal any provision of general law authorizing the levying of taxes to provide for firemen, police and sanitary police pension funds, and to create and perpetuate boards of trustees for the administration of such funds.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R. C. M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925.

5466. Department of finance—accounts—collection and disbursement of funds—purchase and sale of property and supplies. The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes and such other duties as the commission may, by ordinance, require.

He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof; and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof.

Upon the death, resignation, removal or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

Accounting procedure shall be devised and maintained for the municipality adequate to record in detail all transactions affecting the acquisition, custodianship and disposition of values, including cash receipts and disbursements; and the recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each utility publicly owned and operated.

He shall have charge of the preparation and certification of all special assessments for public improvements; the mailing of notices of such assessments to property owners and all other duties connected therewith; the collection of such assessments as are payable directly to the municipality and the preparation and certification of all unpaid assessments to the

county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

No warrant for the payment of any claims shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing such voucher, the supplies and material delivered, or work done, shall be duly inspected and certified to by the head of the proper department or office, or by a person designated by him. The head of each department or office shall require proper time reports from all service rendered to be certified by those having cognizance thereof, to serve as a basis for the preparation of payroll vouchers. Each director of a department and his surety shall be liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him, and shall have power to summon persons and examine them under oath or affirmation which oath or affirmation he may administer.

The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this act he shall collect, receive and disburse all public money of the municipality upon warrant, and shall also receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality, sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such store rooms and store houses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be endorsed as approved.

He may require from the director of each department at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account, to be furnished the several departments

on requisition, goods so furnished to be paid for by the department furnished therewith by warrant made payable to the stores account.

He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition, all proposals to be upon precise specifications, and under such rules and regulations as the commission shall establish. Each order of purchase or sale, to be approved and countersigned by the city manager or his deputy.

In cases of emergency purchases may be made without competition, if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such cases, a copy of the order issued, shall be filed with the director of finance, together with a certificate by the head of the department, stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assistants and force of office employees as may be necessary to properly carry out his duties under the provisions of this act. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer and purchasing agent.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R. C. M. 1921; amd. Sec. 13, Ch. 31, L. 1923.

5467. Sinking fund trustees. The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president, and the director of finance shall be the secretary of the trustees of the sinking fund. The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of the state of Montana or by ordinance.

History: En. Sec. 69, Ch. 152, L. 1917; re-en. Sec. 5467, R. C. M. 1921.

5468. Advertising and matter for publication. All public advertising or publication mentioned as being necessary under the provisions of this act, shall be in a daily newspaper of general circulation within the municipality, if there be such, otherwise in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules and regulations as the commission may establish, and for a term not longer than one year.

History: En. Sec. 70, Ch. 152, L. 1917; re-en. Sec. 5468, R. C. M. 1921.

5469. Limit on amount of contract not approved by city manager and commission. No contract involving an expenditure of more than two hundred and fifty dollars for material or supplies shall be awarded, except upon the approval of the city manager and the commission.

History: En. Sec. 71, Ch. 152, L. 1917; re-en. Sec. 5469, R. C. M. 1921.

5470. Police judge—appointment and powers. The commission shall appoint a police judge who shall have the power and authority now con-

ferred by existing laws and shall hold his office at the will of the commission.

History: En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R. C. M. 1921; amd. Sec. 14, Ch. 31, L. 1923.

5471. Civil service board—establishment—term of office—removal of members—abolishment. The commission may appoint three electors of the municipality as a civil service board; one to serve for two years, and one for four years and one for six years, to take office on the first day of January after the municipality comes under the provisions of this act, or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for six years and until their successors have been appointed and have qualified. Members of the board shall not hold any other public office. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner who shall also act as secretary. The board may appoint such other subordinates as may by appropriation be provided for. It is intended hereby that the establishment of a civil service board shall be permissive and not mandatory. If appointed the board may be abolished at any time upon resolution to that effect by the commission and thereafter any civil service board appointed under the provisions of this act shall cease to exist, but so long as any such civil service board shall exist its operations and proceedings shall be controlled as in this act hereinafter provided.

History: En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R. C. M. 1921; amd. Sec. 15, Ch. 31, L. 1923.

5472. Classified and unclassified service. The civil service of a municipality is hereby divided into the unclassified and the classified service.

1. The unclassified service shall include:

- (a) All officers elected by the people;
- (b) The city manager;
- (c) The heads of departments and heads of divisions of departments, and members of appointive boards;
- (d) The deputies and secretaries of the city manager, and one assistant or deputy, and one secretary for each department, and the clerk of the commission.

2. The classified service shall comprise all positions not specifically included in this act in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the non-competitive class, and the labor class.

(a) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination;

(b) The non-competitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examina-

tions will be given for these positions, but the past achievements of the applicant will be considered;

(c) The labor class shall include ordinary unskilled labor, which is employed by the year.

History: En. Sec. 74, Ch. 152, L. 1917; re-en. Sec. 5472, R. C. M. 1921.

5473. Rules and regulations governing appointments—other duties of board. The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules and regulations, providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law; shall make investigations concerning the enforcement and effect of this chapter, and of the rules adopted. It shall make an annual report to the commission.

History: En. Sec. 75, Ch. 152, L. 1917; re-en. Sec. 5473, R. C. M. 1921.

5474. Chief examiner—duties. The chief examiner shall be the employment officer of all municipal employees coming under the classified service. He shall provide examinations in accordance with the regulations of the board, and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: En. Sec. 76, Ch. 152, L. 1917; re-en. Sec. 5474, R. C. M. 1921.

5475. Promotions in classified service. The board shall provide for promotion to all positions in the classified service, based on records of merit, efficiency, character, conduct, and seniority.

History: En. Sec. 77, Ch. 152, L. 1917; re-en. Sec. 5475, R. C. M. 1921.

5476. Probationary period. An appointment or promotion shall not be deemed complete until a period of probation not to exceed six months has elapsed and a probationer may be discharged or reduced at any time within the said period of six months, upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: En. Sec. 78, Ch. 152, L. 1917; re-en. Sec. 5476, R. C. M. 1921.

5477. Discharges or reductions in rank—how made. An employee shall not be discharged or reduced in rank or compensation until he has been presented with the reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction, and any reply in writing thereto by such employee, shall be filed with the board.

History: En. Sec. 79, Ch. 152, L. 1917; re-en. Sec. 5477, R. C. M. 1921.

5478. Appeal to civil service board. Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or

the city manager, may appeal from the decision of such officer to the civil service board, and such board shall define the manner, time, and place in which such appeal shall be heard. The judgment of such board shall be final.

History: En. Sec. 80, Ch. 152, L. 1917; re-en. Sec. 5478, R. C. M. 1921.

5479. Present incumbents to retain positions unless same are abolished.

Any person in the employ of a municipality, holding a position in the classified service, at the time that the municipality comes under the provisions of this act, shall, unless his position be abolished, retain same until discharged, reduced, promoted, or transferred in accordance herewith.

History: En. Sec. 81, Ch. 152, L. 1917; re-en. Sec. 5479, R. C. M. 1921.

5480. Salaries to be withheld until names of appointees or employees are certified. The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service, unless the pay-roll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this act, or the rules established thereunder.

History: En. Sec. 82, Ch. 152, L. 1917; re-en. Sec. 5480, R. C. M. 1921.

5481. Power of board to procure testimony in investigation. In any investigation conducted by the board it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation, and to administer oaths to such witnesses.

History: En. Sec. 83, Ch. 152, L. 1917; re-en. Sec. 5481, R. C. M. 1921.

5482. Persons in classified service not affected by political or religious opinions or race—political contributions and activity forbidden. No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color, or religious beliefs. No officer or employee of the municipality shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessments, subscription, or contribution for any political party or political purpose whatever. No person holding a position in the classified service shall take any part in political management or affairs or in political campaigns, further than to cast his vote or to express privately his opinion.

History: En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R. C. M. 1921.

5483. Penalties for violation of civil service provisions—to be prescribed by board. The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violations of the civil service provisions of this act.

History: En. Sec. 85, Ch. 152, L. 1917; re-en. Sec. 5483, R. C. M. 1921.

5484. Fixing of salaries and appropriation for civil service. The salaries of the board and its employees shall be determined by the com-

mission, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this act.

History: En. Sec. 86, Ch. 152, L. 1917; re-en. Sec. 5484, R. C. M. 1921.

5485. Local improvements—assessments—laws governing. The commission shall have the power, by ordinance, to provide for the construction, reconstruction, repair, and maintenance by contract, or directly by the employment of labor, of all things in the nature of local improvements, and to provide for the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefitted property, as provided by general law. Whenever the payments for such improvements are to extend over a period of years, and are to be paid for in instalments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of sections 5225 to 5257 of this code.

History: En. Sec. 87, Ch. 152, L. 1917; re-en. Sec. 5485, R. C. M. 1921.

5486. Sewer, water, gas, or other connections—notice to property owners—service and contents. The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed. He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and character of connections required. Such notice shall be served by a person, designated by the director of public service, in the manner provided for the service of summons in civil actions. Non-residents of the municipality, or persons who cannot be found, may be served by one publication of such notice in a daily newspaper of general circulation in the municipality, if such there be, and if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed; and if they be not constructed within the said time, the work may be done by the municipality, and the cost thereof, together with a penalty of five per cent., assessed against the lots and lands for which such connections are made. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917; re-en. Sec. 5486, R. C. M. 1921.

5487. Survey and plats of lands subdivided for sale. Any owner of lots or grounds within the municipality who subdivides or lays them out for sale, must cause to be made an accurate survey and plat thereof, conforming in all things to the provisions of sections 4980 to 4993, inclusive, of this code and shall also file with the clerk of the commission a duly certified copy of such plat or plats.

History: En. Sec. 89, Ch. 152, L. 1917; re-en. Sec. 5487, R. C. M. 1921; amd. Sec. 16, Ch. 31, L. 1923.

5488. Effect of recorded map or plat. The map or plat recorded under the provisions of the foregoing act shall thereupon be sufficient conveyance to vest in the municipality the fee of the parcel of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes in the instrument set forth, expressed, designated, or intended.

History: En. Sec. 90, Ch. 152, L. 1917; re-en. Sec. 5488, R. C. M. 1921.

5489. Director of public service as supervisor of plats—powers and duties. The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width, and to be continuous with the adjoining streets and alleys, and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits, in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys, or when any person plats any land within the corporate limits or within three miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, indorse his written approval thereon. No plat subdividing lands within the corporate limits, or within three miles thereof, shall be entitled to record in the recorder's office of the county without such written approval so indorsed thereon.

History: En. Sec. 91, Ch. 152, L. 1917; re-en. Sec. 5489, R. C. M. 1921.

5490. Restriction as to acceptance of streets and alleys by municipality. No streets or alleys, except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality, nor shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality, nor to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

History: En. Sec. 92, Ch. 152, L. 1917; re-en. Sec. 5490, R. C. M. 1921.

5491. Care, control, improvement, etc., of public highways and places. The commission shall provide, by ordinance, for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipality, and shall cause them to be kept open, in repair, and free from nuisance.

History: En. Sec. 93, Ch. 152, L. 1917; re-en. Sec. 5491, R. C. M. 1921.

5492. Improvement and vacation of streets and highways. When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: En. Sec. 94, Ch. 152, L. 1917; re-en. Sec. 5492, R. C. M. 1921.

5493. Acceptance of dedication of streets and alleys necessary. No street or alley hereafter dedicated to public use by the proprietor of

ground in the municipality shall be deemed a public street or alley, or under the care or control of the commission, unless the dedication be accepted and confirmed by ordinance passed for such purpose, or unless the provisions hereof relating to subdivisions shall have been complied with.

History: En. Sec. 95, Ch. 152, L. 1917; re-en. Sec. 5493, R. C. M. 1921.

5494. Vacating or changing names of streets, etc.—proceedings. The commission in vacating any street or part of a street, or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue, but before vacating any street or part thereof, or narrowing any street, the commission shall first pass a resolution declaring its intention so to do. The city manager shall cause notice of such resolution to be served in the manner that service of summons is required to be made in civil actions upon all persons whose property abuts upon the portion of the street affected by the proposed vacation or narrowing, and by publication once in one daily newspaper of general circulation in the municipality, if such there be, and if not, once in one weekly newspaper of like circulation, as to all persons who cannot be personally served. Said notice shall state the time and place at which objection will be heard. Unless fifty-one per cent. of the affected property objects to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing, and such order of the commission vacating or narrowing a street or alley, which has been dedicated to public use by the proprietor, shall, to the extent that it is vacated or narrowed, operate as a revocation of the acceptance thereof by the commission, but the right of way and easement therein of any lot owner shall not be impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917; re-en. Sec. 5494, R. C. M. 1921.

5495. Appropriation of property for public or municipal purposes. Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title, or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917; re-en. Sec. 5495, R. C. M. 1921.

5496. Power of commission to grant rights to occupy streets, highways, etc.—ordinances and resolutions. The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are, or hereafter may be, granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed, and remain on file with the commission for inspection by the public for at least one week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919; re-en. Sec. 5496, R. C. M. 1921.

5497. Renewal of franchises. The commission may, by ordinance, renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917; re-en. Sec. 5497, R. C. M. 1921.

5498. No exclusive franchise or renewal to be granted. No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before two years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 4, Ch. 44, L. 1919; re-en. Sec. 5498, R. C. M. 1921.

5499. Manner of use and occupation of streets and public grounds to be prescribed. The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

History: En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5499, R. C. M. 1921.

5500. Extension of public utility subject to referendum. The commission may, by ordinance, grant to any individual, company, or corporation operating a public utility, the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility, and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extensions shall expire with the original grant of the utility to which the extension was made, or any renewal thereof.

History: En. Sec. 103, Ch. 152, L. 1917; re-en. Sec. 5500, R. C. M. 1921.

5501. When property owner's consent to public utility necessary. No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal, unless such public utility is of such character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: En. Sec. 104, Ch. 152, L. 1917; re-en. Sec. 5501, R. C. M. 1921.

5502. Fiscal year—estimates of expenditures and revenues—contents—number of copies. The fiscal year of the municipality shall begin on the first day of January. On or before the 15th day of January of each year, the city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures shall be as nearly uniform as possible for the main functional divisions of all departments and shall give in parallel columns the following information:

(a) A detailed estimate of the expenses of conducting each department as submitted by the department;

- (b) Expenditures for corresponding items for the last two fiscal years;
- (c) Expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations plus an estimate of expenditure necessary to complete the current fiscal year;
- (d) Amount of supplies and materials on hand at the date of the preparation of the invoice;
- (e) Increase or decrease of requests compared with the corresponding appropriations for the current year;
- (f) Such other information as is required by the commission or that the city manager may deem advisable to submit;
- (g) The recommendation of the city manager as to the amounts to be appropriated with reasons therefor in such detail as the commission may direct.

A sufficient number of copies of such estimate shall be prepared and submitted, that there may be copies on file in the office of the commission for inspection by the public.

History: En. Sec. 105, Ch. 152, L. 1917; re-en. Sec. 5502, R. C. M. 1921; amd. Sec. 17, Ch. 31, L. 1923; amd. Sec. 2, Ch. 173, L. 1925.

5503. Appropriation ordinance—details concerning. Upon receipt of such estimate, the commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation, the commission shall fix a time and place for holding public hearings upon the tentative appropriation, and shall give public notice of such hearing. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the city manager. The commission shall not pass the appropriation ordinance until ten days after its publication, nor before the first Monday in February.

History: En. Sec. 106, Ch. 152, L. 1917; re-en. Sec. 5503, R. C. M. 1921; amd. Sec. 3, Ch. 173, L. 1925.

5504. Power of first commission over appropriations already made. If, at the beginning of the term of office of the first commission elected under the provisions of this act, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, said commission shall have the power by ordinance to revise, repeal, or change said appropriations, and to make additional appropriations.

History: En. Sec. 107, Ch. 152, L. 1917; re-en. Sec. 5504, R. C. M. 1921.

5505. Transfer of funds. Upon request of the city manager, the commission may transfer any part of an unincumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated to the same office or department.

History: En. Sec. 108, Ch. 152, L. 1917; re-en. Sec. 5505, R. C. M. 1921.

5506. Unexpended appropriations—manner of drawing moneys and incurring obligations. At the close of each fiscal year, the unincumbered balance of each appropriation shall revert to the respective fund from which it was appropriated, and shall be subject to future appropriations.

Any accruing revenue of the municipality, not appropriated as hereinbefore provided, and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned, may from time to time be appropriated by the commission to such uses as will not conflict with any uses for which specifically such revenues accrued.

No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred, except pursuant to the appropriation made by the commission.

History: En. Sec. 109, Ch. 152, L. 1917; re-en. Sec. 5506, R. C. M. 1921.

5507. Fixing salaries and compensation—disposition of fees and moneys.

The commission shall fix by annual salary ordinance the salary or compensation of the city manager, the heads of the departments and its own employees.

The city manager shall fix the number and salaries or compensation of all other officers and employees.

In cities where there is a civil service board as provided for in this act, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules and regulations adopted by the civil service board. All such salaries and rates of pay, shall be reported to the secretary of the civil service board. All fees and moneys received or collected by officers and employees shall be paid into the city treasury.

History: En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R. C. M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925.

5508. Bonds of clerks and employees—premium. The commission or city manager, in fixing the salary of any officer, clerk, or employee, shall determine whether such officer, clerk, or employee shall give a bond and the amount thereof, which bond shall be secured from a regularly accredited surety company authorized to do business under the laws of Montana. Premiums on such bonds shall be paid by the municipality.

History: En. Sec. 111, Ch. 152, L. 1917; re-en. Sec. 5508, R. C. M. 1921.

5509. Persons holding office at time act takes effect—powers and duties imposed by present laws. All persons holding office at the time this act goes into effect shall continue in office and the performance of their duties until provision shall have been otherwise made in accordance with the provisions of this act for the performance or discontinuance of the duties of any such office. When such provision shall have been made, the term of any such officer shall expire and the office be abolished.

The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality under the laws of the state, shall, if such officer, board, commission, or department is abolished by this act, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this act.

History: En. Sec. 112, Ch. 152, L. 1917; re-en. Sec. 5509, R. C. M. 1921.

5510. Official oath. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to an oath or

affirmation, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R. C. M. 1921.

5511. Saving clause as to contracts, work, and improvements. All contracts entered into by the municipality for its benefit, prior to the taking effect of this act, shall continue in full force and effect. All public work begun prior to the taking effect of this act shall be continued and perfected hereunder. Public improvements for which legislative steps shall have been taken under the laws in force at the time this act takes effect may be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 114, Ch. 152, L. 1917; re-en. Sec. 5511, R. C. M. 1921.

5512. Eight-hour day may be established. The commission shall have the power to provide, by ordinance, that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed eight hours shall constitute a day's work.

History: En. Sec. 115, Ch. 152, L. 1917; re-en. Sec. 5512, R. C. M. 1921.

5513. Assessment for removal of snow and ice from sidewalks, etc. The commission shall have the power to provide, by ordinance, for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice, and for assessing against the property the cost of cutting and removing therefrom obnoxious weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917; re-en. Sec. 5513, R. C. M. 1921.

5514. Abandonment of commission-manager plan—proceedings. Any municipality which shall have operated for more than two years under the provisions of this act, may abandon such organization hereunder, and accept the provisions of the general law of the state applicable to municipalities of its population.

Upon the petition of not less than twenty-five per cent. of the electors of such municipality registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under (name of this act) and become a (city or town) under the general law governing (cities or towns) of like population; or if formerly organized under special charter, shall resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of such officers, such municipality shall become a municipality under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such municipality, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, as provided for by the provisions of this act, in so far as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the

people under the provisions of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of two years.

History: En. Sec. 117, Ch. 152, L. 1917; re-en. Sec. 5514, R. C. M. 1921.

5515. Laws continued in force by this chapter. Except as otherwise in this act provided, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect and shall be considered and construed as not repealed by this act, except insofar as the same may be in conflict or inconsistent with the provisions of this act.

History: En. Sec. 118, Ch. 152, L. 1917; re-en. Sec. 5515, R. C. M. 1921; amd. Sec. 19, Ch. 31, L. 1923.

5516. Repealing clause and exception. All laws and parts of laws in conflict herewith are hereby repealed; provided, however, that this act shall not repeal or modify any of the provisions of an act approved March 4, 1913, entitled, An act making the board of railroad commissioners of the state of Montana ex-officio a public service commission for the regulation and control of certain public utilities, etc., or any amendment or amendments of said act, or section 6645 of the codes, and neither shall this act in any manner curtail or impair the power or authority of said public service commission and any order made, action taken, or regulation provided, by said commission shall supersede and nullify any order, regulation, ordinance or other action authorized by this act in conflict with any such order, regulation, or action, of said public service commission; provided, that the annual report relating to the operation of any public utility owned by any municipality operating under the provisions of this act, to be made to said public service commission, shall conform to the fiscal year of such city or town as established by this act.

History: En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R. C. M. 1921; amd. Sec. 20, Ch. 31, L. 1923.

5517. Effect of organization of communities into single municipal district. Whenever any group of communities shall become a single municipal district under the provisions of this law, the commissioners elected at the first election shall have the same functions and authority, and municipal procedure in all respects shall be the same as is provided in this law where single communities, cities, or towns adopt the commission-manager form of government, and the terms of all municipal officers in any prior city or town which may be included in such new municipal district shall in like manner cease and terminate as soon as the commissioners shall by resolution so declare, and the corporate functions and existence of any such prior municipal corporation may in like manner be terminated by said commissioners when the need for the further existence of such prior corporation shall be at an end.

History: En. Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5517, R. C. M. 1921.

5518. Name of new municipal district. Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, such municipal district shall

bear the same name as the principal incorporated city or town in such district.

History: En. Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5518, R. C. M. 1921.

5519. Property vests in new municipality—improvements payable by special assessments—unpaid indebtedness of old municipalities. Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, the corporate property of each such city or town shall become the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts shall not be deemed municipal property within the meaning of this law, to the extent of payments so made. If such prior city or town shall have an unpaid indebtedness, the commissioners of said new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised, all of such property, and if the amount of the indebtedness of such prior city or town shall exceed the inventory value of the property surrendered to the new municipality by such prior city or town, then the excess of such indebtedness over the inventory value of said property shall be a charge only against the taxable property within the limits of such prior city or town, and shall be paid by levy upon such property alone.

History: En. Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5519, R. C. M. 1921.

5520. Rental of county buildings—contracts with county commissioners for work—rate of compensation. Whenever any city organized under this act includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than six per cent. upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5520, R. C. M. 1921.

CHAPTER 409

CITY AND COUNTY CONSOLIDATED GOVERNMENT

Section 5520.1.	Consolidated county and city government authorized.
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5520.1. Consolidated county and city government authorized. The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this act by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 121, L. 1923.

5520.2. Petition—signatures required. The question of the abandonment and termination of the separate corporate existence and government of a county and of each and every city and town therein and the consolidation and merging of the existence and government of such county and each and all of the cities and towns therein into one municipal corporation and government, under the provisions of this act, shall be submitted to the qualified electors of such county if a petition be filed in the office of the county clerk of such county, signed by at least twenty per centum (20%) of the electors of said county whose names appear on the official register of voters of the county on the date of the filing of such petition, requesting that such question be submitted to the qualified electors of the county.

History: En. Sec. 2, Ch. 121, L. 1923.

Operation and Effect

The question of the sufficiency of a petition, filed under this section, requesting the calling of a county election submitting the proposition of the consolidation of the county and all cities and towns

into one municipal corporation, is to be determined by the county clerk and not the board of county commissioners, and when he certifies the petition as sufficient it is the clear duty of the board to order an election, unless the petition is void on its face. *State ex rel. Freeze v. Taylor et al.*, 90 M 439, 441 et seq., 4 P 2d 479.

5520.3. Form of petition—certificate of county clerk—special election—notice. Such petition shall be substantially in the form and shall be signed, verified and filed in the manner prescribed in this act for initiative, referendum and recall petitions, and shall designate therein the name by which such consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein. If the county clerk shall find that such petition, or amended petition, so filed, is signed by the required number of qualified electors he shall so certify to the board of county commissioners of such county at their next regular meeting, and such board shall thereupon, and within ten days after receiving the clerk's certificate, order a special election to be held at which election such question shall be submitted to the qualified electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 535.

History: En. Sec. 3, Ch. 121, L. 1923.

5520.4. Form of ballot. At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used on general elections, and shall have printed thereon the following.

"Shall the corporate existence and government of the County of.....
..... and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of Chapter (giving the number of this act), Acts of the Eighteenth Legislative Assembly of the State of Montana, to be known and designated as 'City and County of.....'?"

☐

YES.

☐

NO.

Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 4, Ch. 121, L. 1923.

5520.5. Special election of commission—proclamation—nominations—conduct of election. If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within two weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled, which order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 535; provided, however, that if any general election is to be held in such county after three months but within six months from the date of the making of such order then such order shall require such special election to be held at the same time as such general election. No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be voted for at such special election, but such candidates shall be nominated directly by petition which shall be in substantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 5, Ch. 121, L. 1923.

5520.6. Powers of consolidated municipalities. The inhabitants of every consolidated municipality organized under the provisions of this act, as its limits are at the time of such organization, or as they may be thereafter established as provided by law, shall be a body politic and corporate under

the designation and name as adopted at the election providing for such consolidation and merging, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple, or lesser interest or estate, by purchase, gift, devise, appropriation, lease or lease with privilege of purchase, and may sell, lease, hold, manage and control such property as the interest of the municipality may require; levy and collect such taxes as are authorized by this act or by the general laws of the state; and, except as otherwise provided in this act, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities and towns by the laws of this state. All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this act, or in the general laws of the state, or when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

History: En. Sec. 6, Ch. 121, L. 1923.

5520.7. Commissioners—number—term—vacancies—qualifications. Except as otherwise provided in this act all powers of the consolidated municipality shall be vested in a commission, and for the purpose of determining the number of members composing such commission, consolidated municipalities organized under the provisions of this act shall be classified and all of the provisions of sections 4741 and 4742, governing and controlling the classification of such consolidated municipalities. In consolidated municipalities of the first class such commission shall consist of seven members; in consolidated municipalities of the second, third and fourth classes of five members; and in consolidated municipalities of the fifth, sixth, seventh and eighth classes of three members. The term of office of members of the commission shall be four years and shall commence on the first day of July following their election; provided, however, that the terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire on the last day of June in the first year following their election, and the terms of the remaining members first elected shall expire on the last day of June in the third year following their election. If a vacancy occur in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term. Members of the commission must be qualified electors of the consolidated municipality and must be the owners of real estate situated therein to the value of not less than one thousand dollars, and shall not hold any other public office except that of notary public or member of the state militia. A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

History: En. Sec. 7, Ch. 121, L. 1923.

5520.8. Organization of commission—meetings—notice meetings. At 2 o'clock p. m. on the last day of June following a regular municipal election

the commission shall meet at the court-house in the consolidated municipality and the newly elected members shall assume the duties of office; provided, however, that the first meeting of such commission, after the special election at which the first members of the commission are elected, shall be held at 2 o'clock p. m. on the first day of the third month following such special election, and at such meeting the members of such commission shall determine by lot the members whose terms will expire on the last day of June in the first year following such special election and the members whose terms will expire on the first day of July in the third year following such election. Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. Any such notice shall state the subject to be considered at the meeting and no other subject shall be considered at such meeting. All meetings of the commission, and of committees thereof, shall be open to the public and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat.

History: En. Sec. 8, Ch. 121, L. 1923.

5520.9. Rules of commission—expelling members. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior and, by vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

History: En. Sec. 9, Ch. 121, L. 1923.

5520.10. Officers of commission—powers of president—vice-president. At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on the first day of July following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice president. The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this act and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order and enforce the law. If a vacancy occur in the office of president, or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

History: En. Sec. 10, Ch. 121, L. 1923.

5520.11. Director of finance—powers. The director of finance shall be ex-officio clerk of the commission and shall either in person or by deputy

keep the records of the commission and perform such other duties as may be required by this act or by the commission.

History: En. Sec. 11, Ch. 121, L. 1923.

5520.12. Quorum of commission—voting. A majority of the members elected to the commission shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn, or regarding the attendance of absent members may be adopted by a majority of the members present.

History: En. Sec. 12, Ch. 121, L. 1923.

5520.13. Compensation of commission—maximum—penalty for absences—mileage. The commission may by ordinance provide compensation for its members to be paid in equal monthly or quarterly installments; but the total amount of any such compensation for each member, shall not exceed the sum of (\$400.00) per year.

Any member absent from a regular or regularly called meeting of the commission, except on account of his own illness, shall forfeit two per centum (2%) of his annual compensation for each such absence. Absence from all regular meetings for a period of ninety days shall operate to vacate the seat of a member unless such absence be authorized by the commission. In addition to any compensation authorized by this section each member of the commission shall receive ten cents per mile for any distance, in excess of ten miles, necessarily traveled in going from and returning to his residence because of attendance upon a regular, or regularly called meeting of the commission.

History: En. Sec. 13, Ch. 121, L. 1923.

5520.14. Ordinances, enacting of—form of enacting clause. Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, except as provided in the next succeeding section of this act. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on three separate days, unless the requirement of reading on three separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading.

The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the city and county of _____," and the enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the city and county of _____."

History: En. Sec. 14, Ch. 121, L. 1923.

5520.15. Revision and codification of ordinances—effect as evidence. Ordinances may be revised, codified, rearranged and published in book

form under appropriate titles, chapters and sections and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification. Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes or journals would be received.

History: En. Sec. 15, Ch. 121, L. 1923.

5520.16. Amending ordinances. No ordinance, resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution or section thereof as revised or amended.

History: En. Sec. 16, Ch. 121, L. 1923.

5520.17. Effective date of ordinances—emergencies—submission to electors of measures concerning franchises or special privileges. Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after thirty days from the date of their passage. Ordinances adopted by the electors shall take effect at the time fixed therein, or, if no time is specified, thirty days after the adoption thereof. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution. No measure making or amending a grant, renewal or extension of a franchise or other special privilege shall ever be passed without first submitting the application therefor to the resident freeholders in the manner provided by section 5075 and 5076.

History: En. Sec. 17, Ch. 121, L. 1923.

5520.18. Recording and publishing of resolutions and ordinances. Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within ten days after its final passage each ordinance or resolution shall be published at least once in such manner as the commission may by ordinance provide.

History: En. Sec. 18, Ch. 121, L. 1923.

5520.19. Initiative measures—petition. Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by ten per centum (10%) of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the com-

mission. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

History: En. Sec. 19, Ch. 121, L. 1923.

5520.20. Action of commission on initiative petitions. If an initiative petition, or amended petition be found sufficient by the clerk he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the ordinance to the commission, with its recommendations thereon, not later than sixty days after the date on which such ordinance was submitted to the commission by the clerk. Upon receiving the ordinance from the committee the commission shall proceed at once to consider it and shall take final action thereon within thirty days from the date of such committee report.

History: En. Sec. 20, Ch. 121, L. 1923.

5520.21. Submission of initiative measure to electors. If the commission fail to pass an ordinance proposed by initiative petition, or pass it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners require the submission of a proposed ordinance to a vote of the electors they shall certify that fact to the clerk and file in his office a certified copy of the ordinance, in the form in which it is to be submitted, within ten days after final action on such ordinance by the commission.

History: En. Sec. 21, Ch. 121, L. 1923.

5520.22. Time for submitting to electors—adoption on favorable vote. Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held within six months but more than ninety days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than ninety days after receipt of the clerk's certificate. If no municipal election be held within six months as aforesaid, and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such six months. If, when submitted to the electors, a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

History: En. Sec. 22, Ch. 121, L. 1923.

5520.23. Effective date of initiative measure. When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form, and the committee of the petitioners require that such proposed ordinance be submitted to a vote of the electors as hereinbefore provided, the ordinance as passed by the commission shall not take effect until after such vote, and, if the proposed ordinance so submitted, be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

History: En. Sec. 23, Ch. 121, L. 1923.

5520.24. Repealing ordinances may be initiated—publication, amending and repealing of initiative measures by commission. Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published, and may be amended or repealed by the commission, as in the case of other ordinances.

History: En. Sec. 24, Ch. 121, L. 1923.

5520.25. Referendum—petition. The electors shall have power to approve or reject at the polls any ordinance passed by the commission, except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change, or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors, shall be subject to the referendum in the same manner as other ordinances. If, within thirty days after the final passage of an ordinance, a petition signed by ten per centum (10%) of the qualified electors whose names appear on the register of voters on the date when such petition is filed, shall be filed with the clerk requesting that the ordinance, or any specified part thereof, be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance, or part thereof, the repeal of which is sought.

History: En. Sec. 25, Ch. 121, L. 1923.

5520.26. Reconsideration of measure by commission—reference to electors. If a referendum petition, or amended petition, be found sufficient by the clerk he shall certify that fact to the commission at its next regular meeting and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors as hereinafter provided. Upon receipt of the clerk's certificate the commission shall proceed to reconsider the ordinance or part thereof and its final vote upon such reconsideration shall be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance, or part thereof, be not repealed it shall be submitted to the electors at the next municipal election held not less than ninety days after such final vote by the commission. The commission

by vote of not less than two-thirds of its members may submit the ordinance, or part thereof, to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance, or part thereof, be not approved by a majority of those voting thereon it shall be deemed repealed.

History: En. Sec. 26, Ch. 121, L. 1923.

5520.27. Voting on initiative or referendum measures—ballots. Ordinances, or parts thereof, submitted to vote of the electors in accordance with the initiative and referendum provisions of this act shall be submitted by ballot title which shall be prepared in all cases by the director of law. The ballot title may be distinct from the legal title of any such proposed or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance or part thereof. The ballot used in voting upon any ordinance, or part thereof, shall have below the ballot title the two following propositions, one above the other, in the order indicated: "For the ordinance" and "Against the ordinance." Immediately at the left of each proposition there shall be a square in which by making a cross mark (X) the elector may vote for or against the ordinance or part thereof. Any number of ordinances, or parts thereof, may be voted upon at the same election and may be submitted on the same ballot, but the ballot used for voting thereon shall be for that purpose only.

History: En. Sec. 27, Ch. 121, L. 1923.

5520.28. Preliminary acts authorized prior to submission of ordinance to electors. In case a petition be filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement, may be taken prior to the election.

History: En. Sec. 28, Ch. 121, L. 1923.

5520.29. Petitions for initiative, referendum or recall—signatures—affidavit. The signatures to initiative, referendum or recall petitions need not all be appended to one paper, but to each separate petition paper there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five electors of the municipality, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to the petition paper shall be as follows:

State of Montana, city and county of.....,
, being duly sworn, deposes and
 says that he is the circulator of the foregoing paper and that the signatures

appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed.....

Subscribed and sworn to before me this day of
....., 19.....

Notary public for the state of Montana.

Residing at, Montana.

My commission expires

History: En. Sec. 29, Ch. 121, L. 1923.

Operation and Effect

Held, that the provision of this section that each petition paper shall bear the names and addresses of five electors of the municipality who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition, has reference to petitions for the enactment of ordinances under the referendum power after the new municipality has been created, and not to the initial petition looking to the creation of the consolidated government. State ex

rel. Freeze v. Taylor et al., 90 M 439, 441 et seq., 4 P 2d 479.

Id. Held, that the use of the ditto mark to indicate that the signer of an initiative or referendum petition has his residence in the same city or voting precinct as the signer immediately next preceding his signature is a sufficient compliance with the provision of this section requiring an elector to indicate after his name his place of residence, or other description sufficient to identify the place, particularly where there is no allegation that anyone was or could be misled by the addresses given.

5520.30. Petitions, assembling of papers comprising—clerk's certificate. All petition papers comprising an initiative, referendum or recall petition shall be assembled and filed with the clerk as one instrument. Within ten days after a petition is filed the clerk shall determine whether it is signed by a sufficient number of electors and shall attach thereto a certificate showing the result of his examination. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

History: En. Sec. 30, Ch. 121, L. 1923.

5520.31. Petitions—amendments—filing new petition not precluded by finding of insufficiency. An initiative, referendum or recall petition may be amended at any time within ten days after the making of a certificate of insufficiency by the clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The clerk shall, within five days after such amendment is filed, make examination of the amended petition and, if his certificate shall show the petition still to be insufficient, he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

History: En. Sec. 31, Ch. 121, L. 1923.

5520.32. Manager—appointment—powers—removal and suspension—compensation. The commission shall appoint a manager, who shall be the chief executive officer of the municipality. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the municipality. No

member of the commission shall, during the time for which elected, be chosen manager. The manager shall not be appointed for a definite term, but shall be removable at the pleasure of the commission. In case the commission determine to remove the manager he shall, if he so demand, be given a written statement of the reason alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office. The action of the commission in suspending or removing the manager shall be final, it being the intention of this act to vest all authority and fix all responsibility for any such suspension or removal in the commission. In case of the absence or disability of the manager the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

History: En. Sec. 32, Ch. 121, L. 1923.

5520.33. Manager—responsibility—appointment of subordinate officers—qualifications and term of appointees. The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this act and except as he may authorize the head of a department or office, responsible to him to appoint subordinates in such department or office. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days.

History: En. Sec. 33, Ch. 121, L. 1923.

5520.34. Removal of appointees—notice—hearing—decision of manager as final. Any officer or employee of the municipality appointed by the manager, or upon his authorization, may be laid off, suspended or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of lay-off, suspension or removal given to an officer or employee, or written notice left at or mailed to his usual place of residence, shall be sufficient to put any such lay-off, suspension, or removal into effect unless the person so notified shall, within five days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the lay-off, suspension or removal shall supply the person notified thereof with a written statement of the reasons therefor and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the lay-off, suspension or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as, in his opinion, the good of the service may require. The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer,

body or court whatsoever. A copy of the written statement of reasons given for any lay-off, suspension or removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

History: En. Sec. 34, Ch. 121, L. 1923.

5520.35. Commissioners not to direct or request appointment or interfere with administrative service—penalty. Neither the commission nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office or employment by the manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately. Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

History: En. Sec. 35, Ch. 121, L. 1923.

5520.36. Manager—general duties. It shall be the duty of the manager to act as chief conservator of the peace within the municipality; to supervise the administration of the affairs of the municipality; to see that the ordinances of the municipality and the laws of the state are enforced; to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable; to keep the commission advised of the financial conditions and future needs of the municipality; to prepare and submit to the commission such reports as may be required by that body; and to perform such other duties as may be prescribed by this act or be required of him by ordinance or resolution of the commission.

History: En. Sec. 36, Ch. 121, L. 1923.

5520.37. Manager and directors may attend commission meetings—discussions. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

History: En. Sec. 37, Ch. 121, L. 1923.

5520.38. Departments—establishing and changing—consolidations. In consolidated municipalities of the first, second, third and fourth classes there shall be a department of finance; a police department, a department of public work, a department of health, a fire department, and such other departments and offices as may be established by ordinance. In consolidated municipalities of the fifth, sixth, seventh and eighth classes there shall be a department of finance, a police department, a department of

public works and a department of health and such other departments and offices as may be established by ordinance. The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this act, but no function or duty assigned by this act to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommend, and the commission so authorize, the manager may appoint one person to act, as the head of two or more departments or offices; but the department of law must not thus be joined with any other department, nor shall the manager be authorized to act as head of the department of finance, or of any office therein other than of purchasing agent or assessor.

History: En. Sec. 38, Ch. 121, L. 1923.

5520.39. Subordinates, employment of. The number of assistants and other subordinates to be employed in or by each administrative department or office shall be fixed by the commission, but the commission may authorize the manager to determine the number of such assistants and subordinates in and for a specified department or office subject to the appropriations made thereto.

History: En. Sec. 39, Ch. 121, L. 1923.

5520.40. List of employees to be kept by director of finance—compensation—recovering illegal payments. The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay, nor shall the director of finance issue, any warrant for the payment of, any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sum paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section, or through omission or error in such information, payment is made to any person whose name should not be on such list, or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission or error the payment or excess payment was made, or from the surety on his official bond.

History: En. Sec. 40, Ch. 121, L. 1923.

5520.41. Compensation schedule to be fixed by commission. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service

except those of heads of departments and heads of offices not included within regular departments shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinances establish a schedule of compensation for the positions so graded and classified which shall prescribe uniform compensation for like service as determined by the grading and classification of the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

History: En. Sec. 41, Ch. 121, L. 1923.

5520.42. Advisory boards may be appointed—duties. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation and it shall be their duty to consult and advise with the officer in charge of the department or office for which they are appointed but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

History: En. Sec. 42, Ch. 121, L. 1923.

5520.43. Investigation of municipal affairs. The commission, the manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena, or to produce such books, papers and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

History: En. Sec. 43, Ch. 121, L. 1923.

5520.44. Department of law—qualifications and duties of director—salary—prosecutions. The department of law shall be in charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys. He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that now are or hereafter may be prescribed for county attorneys, city attorneys and public administrators and, in addition thereto, he shall be chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission. He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the

same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "County Attorney of the city and county of"

History: En. Sec. 44, Ch. 121, L. 1923.

5520.45. Department of finance—powers and duties of director. The director of finance shall have charge of the administration of the financial affairs of the municipality including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and moneys; the making of special assessments, the assessment of property for taxation; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage and distribution of supplies needed by the municipality; and such other duties as the commission may by ordinance require. He shall also have all powers and perform all duties imposed upon county clerks, recorders and auditors by general law.

History: En. Sec. 45, Ch. 121, L. 1923.

5520.46. Report of revenues and expenses to be made monthly. The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as show the exact financial condition of the municipality and of each department, and office thereof as of the last day of such month.

History: En. Sec. 46, Ch. 121, L. 1923.

5520.47. Division of audit and accounts—duties—reports to. There shall be in the department of finance a division of audit and accounts of which the directors of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality and, whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office showing the receipt of all moneys and the disposition thereof.

History: En. Sec. 47, Ch. 121, L. 1923.

5520.48. Audit of accounts on death, removal or expiration of term of officer—collection when indebtedness found—other audits. Upon the death, resignation, removal or expiration of the term of any officer of the municipality the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government. In case of the death, resignation or removal of the director of finance, the manager shall cause an audit to be made of his accounts. If, as a result of any such audit, an officer be found indebted to the municipality the director of finance, or other person making such audit, shall immediately give notice thereof to the commission, the manager and the director of law and the latter shall forthwith proceed to collect such indebtedness.

History: En. Sec. 48, Ch. 121, L. 1923.

5520.49. Division of treasury—powers and duties—designation of depositories. There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, and who shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law and who shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class. All moneys received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury, and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

History: En. Sec. 49, Ch. 121, L. 1923.

5520.50. Division of purchase and supplies—purchasing agent—powers and duties. There shall be in the department of finance a division of purchases and supplies at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner, and with such exceptions, as may be provided by ordinance and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

History: En. Sec. 50, Ch. 121, L. 1923.

5520.51. Supplies—purchase—limit on furnishing supplies to departments and offices. Before making any purchase or sale the purchasing agent shall give opportunity for competition, under such rules and regulations as the commission may by ordinance establish. Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent, and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there be to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

History: En. Sec. 51, Ch. 121, L. 1923.

5520.52. Division of assessment—assessor—qualification, duties and powers. There shall be in the department of finance a division of assessment the head of which shall be the assessor. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed for county assessors and deputy assessors by general law.

History: En. Sec. 52, Ch. 121, L. 1923.

5520.53. Assessor's duties concerning special assessments. The assessor shall also be in charge of the preparation of all special assessments for public improvements; the giving of notice of such assessments to property

owners; and the certification of all unpaid assessments to the director of finance.

History: En. Sec. 53, Ch. 121, L. 1923.

5520.54. Fiscal year defined. The fiscal year of the municipality shall begin with the first day of July and shall end with the next succeeding thirtieth day of June, and all of the provisions of the general laws of the state in respect to budgets for cities and counties shall apply to such municipality.

History: En. Sec. 54, Ch. 121, L. 1923.

5520.55. Tax levy for current expense—limitation on. No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of sixteen mills on each dollar of the assessed valuation.

History: En. Sec. 55, Ch. 121, L. 1923.

5520.56. Tax levy limit—application of. The tax limit provided by section 5520.55 shall apply only to taxes for the purposes therein specified. Taxes required by this act to be levied on account of the debt of the municipality, or any district thereof, and special taxes authorized by this act or by the general laws of the state, shall not be affected by such limits nor shall such taxes be considered in determining the limits of taxation fixed by section 5520.55.

History: En. Sec. 56, Ch. 121, L. 1923.

5520.57. Special taxes—power to levy. The municipality shall have the power and authority to levy special taxes for all purposes which counties, cities and towns are authorized to levy by general laws of the state, and all of the provisions of such laws shall be applicable to and shall govern and control the municipality in the levying and collection of such special taxes.

History: En. Sec. 57, Ch. 121, L. 1923.

5520.58. Tax levy for special services—limitation on. The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by section 5520.55 as may be necessary to pay the cost of such special service or services. Any such additional tax levied under the authority of this section upon the property within any district shall not exceed fifteen mills unless the question of levying a higher rate for a specified year or years shall have been submitted to the electors of the district and approved by a majority of those voting therein; but in no case shall such additional levy be more than twenty mills.

History: En. Sec. 1, Ch. 162, L. 1925.

5520.59. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time and under the penalties prescribed by law for the collection and payment of state and county taxes.

History: En. Sec. 58, Ch. 121, L. 1923.

5520.60. Tax levies for indebtedness of special districts and cities and towns. The district comprised within the boundaries of any city, town or district, existing within the county at the time of the adoption of this act by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town or district prior to such adoption, be continued as a special district until such debt shall have been paid, and the commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt. The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole. The tax levy for the debt of the municipality as a whole, and the tax levy for the debt of each such district, shall each be a separate levy and shall be distinct from and in addition to all other tax levies, and the proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and no part of any such fund shall be used for any other purpose whatever.

History: En. Sec. 59, Ch. 121, L. 1923.

5520.61. Warrants, how issued. No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim be evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

History: En. Sec. 60, Ch. 121, L. 1923.

5520.62. Examination of claims by director of finance—liability for illegal payment of claim. The director of finance shall examine all payrolls, bills and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed and duly approved; that it is legally due and payable; and that an appropriation has been made therefor which has not been exhausted. He may investigate any claimant and for that purpose may summon before him any officer, agent or employee of the municipality, any claimant or other person, and examine him upon oath or affirmation relative thereto, and if he finds a claim to be fraudulent, erroneous or otherwise invalid or that the appropriation out of which such claim is payable has been exhausted, he shall not issue a warrant therefor. If the director of finance issue a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this section he and his

sureties shall be individually liable to the municipality for the amount of such warrant if paid.

History: En. Sec. 61, Ch. 121, L. 1923.

5520.63. Obligations for works to be paid by special assessments—certificate of finance director necessary before payment. No contract, agreement or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds shall be entered into, nor shall any order for such expenditures be valid, unless the director of finance shall first certify to the commission that the object or purpose for which such expenditure is to be made and the amount thereof is provided for by an appropriation in the annual budget, or in a supplemental budget, and that the same has not been expended. The certificate of the director of finance shall be filed and made a matter of record in his office, and the appropriation for such purpose shall thereafter be considered as having been set aside and expended to the amount of such contract, agreement or obligation.

History: En. Sec. 62, Ch. 121, L. 1923.

5520.64. Obligation void when violating preceding section. All contracts, agreements or other obligations entered into, all ordinances and resolutions passed, and orders adopted, contrary to the provisions of section 5520.63 shall be void, and no person whatever shall have any claim, or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by such sections, or fasten upon the municipality any liability whatever in excess thereof.

History: En. Sec. 63, Ch. 121, L. 1923.

5520.65. Designation of depositories—securities. On or before the first day of August of each year the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks the commission shall specify the maximum amount of municipal funds that may be kept at any time in each. Unless a bank designated as a depository shall elect to deposit securities with the treasurer, as provided in the next succeeding section, it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safe keeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository.

History: En. Sec. 64, Ch. 121, L. 1923.

5520.66. Bonds as depository securities—interest—substitution of securities. In lieu of the surety bonds specified in the next preceding section any bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of this act, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by

the commission and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer, or his order, on demand and free of exchange, all moneys at any time deposited therein with interest thereon at the rate agreed upon, and that in case of default on the part of such bank the commission shall have power and authority to sell such bonds, or so much thereof as may be necessary, to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission a bank may at any time substitute other like securities of equal value for those so deposited.

History: En. Sec. 65, Ch. 121, L. 1923.

5520.67. Additional or new securities—when required. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds, or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

History: En. Sec. 66, Ch. 121, L. 1923.

5520.68. Surety bonds—record of sureties. All surety bonds given by a bank in accordance with the provisions of this act shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing herein provided shall impair the rights and remedies of the municipality on such bonds under the laws of the state. Bonds and other securities given by banks in accordance with this act shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safe keeping. The record of such bonds and securities kept by the director of finance, or copies thereof certified by that officer, shall be competent and prima facie evidence of the contents and tenor thereof.

History: En. Sec. 67, Ch. 121, L. 1923.

5520.69. Deposit of funds—distribution. All funds received by the treasurer shall be deposited by him in the designated banks in the name of the municipality subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the maximum amounts which they have been authorized to receive by the commission.

History: En. Sec. 68, Ch. 121, L. 1923.

5520.70. Interest on deposits—payment—monthly finance and interest statement. Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which shall in no case be less than two and one-half per centum. The interest due on such deposits shall be paid to the treasurer by check on the last

day of each quarter of the fiscal year. If the treasurer shall at any time receive, or have in any bank, funds which will probably remain on deposit three months or longer he may, with the approval of the commission either take therefor certificates of deposit from a designated depository, payable to his order on demand, and bearing a higher rate of interest, or invest such funds in any bonds maturing within six months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank, and the interest received therein, as of the last day of each month.

History: En. Sec. 69, Ch. 121, L. 1923.

5520.71. Disbursement of money by depositories. No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank signed by the treasurer.

History: En. Sec. 70, Ch. 121, L. 1923.

5520.72. Liability of treasurer and sureties for deposits. When the funds of the municipality are deposited and kept in designated banks according to the provisions of this act the treasurer and the sureties on his official bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss, shall not exempt the treasurer, the members of the commission or sureties on their respective bonds from liability. Nothing herein provided shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

History: En. Sec. 71, Ch. 121, L. 1923.

5520.73. Limit of indebtedness. The municipality shall not become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness, and all warrants, bonds or obligations in excess of such amount given by or on behalf of the municipality shall be void.

History: En. Sec. 72, Ch. 161, L. 1923.

5520.74. Borrowing money—provisions affecting. The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

History: En. Sec. 73, Ch. 121, L. 1923.

5520.75. Sinking fund board—investments. The sinking funds of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance and the director of law. The president shall be the chairman and the director of finance the secretary of the board. By and with consent of the commission the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United

States; state bonds or certificates of indebtedness of Montana or any other state of the United States; bonds of the municipality; registered warrants on the treasury of such municipality; bonds of any city in the state of Montana; and in such county or school bonds of Montana as may be approved by the commission. In case the sinking fund be invested in bonds of the municipality such bonds shall not be cancelled before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

History: En. Sec. 74, Ch. 121, L. 1923.

5520.76. Letting of contracts—advertising for bids—execution. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance or operation of any public works or improvements for which must be paid a sum exceeding two hundred and fifty dollars (\$250.00) shall be awarded to the lowest responsible bidder, after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: En. Sec. 75, Ch. 121, L. 1923.

5520.77. Alteration of contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

History: En. Sec. 76, Ch. 121, L. 1923.

5520.78. Police department—powers of officers—director—duties and powers—designation as sheriff—deputies. The police department shall be in charge of a director who shall be chief of the police force of the municipality. Officers and patrolmen of the police department, subordinate to the director, shall have the powers and perform the duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers and patrolmen shall have the powers and perform the duties conferred on and required of deputy sheriffs by the general laws of the state. For the purpose of serving and making return on all criminal and

civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "Sheriff of the city and county of _____" and each police officer and patrolmen shall be known and designated as deputy sheriff.

History: En. Sec. 77, Ch. 121, L. 1923.

5520.79. Department of public works—director—powers and duties.

The department of public works shall be in charge of a director who shall manage and have charge of the construction, repair, improvement and maintenance of all public buildings, of roads, streets, alleys, sidewalks, bridges, viaducts and other public ways; of sewers, drains, ditches, culverts, streams and water courses; and of boulevards, parks, playgrounds, cemeteries and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal, plants and farms, and all public utilities belonging to the municipality, or any subdivision thereof, and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings and estimates for such public work, and for the preservation of contracts, papers, plans, tools and appliances belonging to the municipality and pertaining to the functions of the department.

History: En. Sec. 78, Ch. 121, L. 1923.

5520.80. Director of public works—qualifications—powers and duties.

The director of public works shall have the qualifications prescribed by law for county surveyors and, in addition to the duties required by this act and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

History: En. Sec. 79, Ch. 121, L. 1923.

5520.81. Department of health—director—qualifications—powers and duties. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in the state of Montana. Except as otherwise provided in this act the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

History: En. Sec. 80, Ch. 121, L. 1923.

5520.82. County board of health—exercise of duties. The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards the commission shall act by ordinance, resolution or vote and according to the procedure prescribed by this act to be followed when acting

as commission of the municipality, and it shall not be necessary to the validity of any such action for the commission to declare, or for the records thereof to indicate that it is acting in other than its usual capacity. Regulations affecting the public health, additional to those established by general law, and for the violation of which penalties are imposed, may be prescribed by ordinance and enforced as provided therein.

History: En. Sec. 81, Ch. 121, L. 1923.

5520.83. Fire department—director—duties as chief. The fire department of the municipality shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

History: En. Sec. 82, Ch. 121, L. 1923.

5520.84. Firemen's disability funds—how continued. Any disability fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as one such fund for the fire department of the municipality. The board of trustees of such disability fund shall consist of the president, the director of finance, the director of law, the director of the fire department, and one member of the fire department selected by a majority of the members of such department between the first and tenth day of July of each year in which the municipality shall elect members of the commission. Except as provided in this section, the disability fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 83, Ch. 121, L. 1923.

5520.85. Superintendent of schools — appointment — compensation — powers and duties. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term, but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

History: En. Sec. 84, Ch. 121, L. 1923.

5520.86. Police court—judge—qualifications—compensation—jurisdiction. A police court is hereby established in and for each municipality with the jurisdiction, powers and duties within the municipality provided by general law for police courts in cities and towns, and for justices of the peace. The commission shall, by majority vote of all its members, appoint a police judge or judges to serve during the pleasure of the commission. No person shall be appointed police judge unless at least twenty-five years of age and admitted to practice law in the state of Montana. The compensation of the police judge or judges shall be fixed by the commission.

History: En. Sec. 85, Ch. 121, L. 1923.

5520.87. Construction of public works. Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained or operated either by contract or directly by the municipality as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

History: En. Sec. 86, Ch. 121, L. 1923.

5520.88. Special improvement districts—power to create. The municipality shall have the same power and authority to create special improvement districts and for like purposes, and to create special lighting districts and sprinkling districts as provided by the laws of the state for cities, and towns.

History: En. Sec. 87, Ch. 121, L. 1923.

5520.89. Public works, director to have charge of—special improvement districts, laws applicable to. The director of public works shall be the engineer in charge of all such work, works or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts and sprinkling districts in cities and towns shall apply to and control the establishment under this act of special improvement districts, special lighting districts and sprinkling districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

History: En. Sec. 88, Ch. 121, L. 1923.

5520.90. Elections—officers to act. For any election held on the question of the adoption of this act, and for the first election of members of the commission thereunder, if adopted the county clerk and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county clerks and boards of county commissioners by the general laws of the state. After the adoption of this act by the electors of the county, and the election and qualification of a commission thereunder, the powers and duties of county clerks and boards of county commissioners under the general election laws of the state shall devolve upon the clerk and commission of the municipality and, except as otherwise provided in this act, the provisions of such laws shall continue to apply to all elections held within the municipality.

History: En. Sec. 89, Ch. 121, L. 1923.

5520.91. Municipal primary election—when held—nominees, majority vote elects—time for polls to be open—conduct of election. A municipal primary election for the choice of members of the commission shall be held on the last Tuesday in April in each year in which members of the commission are to be elected. All candidates for the commission receiving a ma-

jority of the votes cast at the municipal primary election shall be deemed and declared elected to the commission. If candidates equal to the number of members of the commission to be elected do not receive a majority of the votes cast at such primary election, a municipal primary election shall be held on the first Tuesday in June next following the election. At all municipal elections the polls shall be open from 8 a. m. to 6 p. m. The time, manner and method of establishing election precincts and polling places and appointment of judges of election and the method of conducting election, registering voters therefor, counting the votes cast thereat, and canvassing the returns thereof, shall be as prescribed by the general election laws of the state.

History: En. Sec. 90, Ch. 121, L. 1923.

5520.92. Nominating petitions. Any elector of the municipality eligible to membership in the commission may be placed in nomination therefor by petition filed with the clerk and signed by at least two per centum (2%) of the qualified electors whose names appear upon the official register of voters of the municipality. The signatures to a nominating petition need not all be appended to one paper, but to each separate leaf of the petition there shall be attached an affidavit of the circulator thereof stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a petition shall sign his name in ink or indelible pencil and, after his name, shall designate his residence by street and number or other description sufficient to identify the place, and give the date when his signature was made. No elector shall sign petitions for more candidates for the commission than the number of places to be filled therein at the forthcoming primary election.

History: En. Sec. 91, Ch. 121, L. 1923.

5520.93. Form of nominating petition. The form of nominating petition papers shall be substantially as follows:

We, the undersigned electors of the city and county of _____, hereby nominate _____ whose residence is _____ for the office of commissioner, to be voted for at the primary election to be held on the last Tuesday of April, 19_____, and we individually certify that we are qualified to vote for candidates for the above office and that we have not signed nominating petitions for more than _____ candidates for the commission.

Residence (street and number) or description to identify place.

Name.

Date.

State of Montana, city and county of _____ ss.

_____, being duly sworn, deposes and says that he is the circulator of this petition paper; that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed _____

Subscribed and sworn to before me this day of
, 19.....

Notary public for the state of Montana, residing at,
 Montana. My commission expires, 19.....

History: En. Sec. 92, Ch. 121, L. 1923.

5520.94. Filing of petitions—notification of nominees—entry of names on ballot. All separate leaves comprising a nominating petition shall be assembled and filed with the clerk as one instrument at least thirty days prior to the next succeeding last Tuesday in April. Within five days after the filing of the nomination petition the clerk shall notify the person named therein as a candidate whether such petition is signed by the required number of qualified electors. Any eligible person placed in nomination as here-inbefore provided shall have his name printed on the ballots and placed upon any voting machine used at the primary election, if within five days after such nomination, he shall have filed with the clerk a written acceptance of the nomination.

History: En. Sec. 93, Ch. 121, L. 1923.

5520.95. Ballots—party designation forbidden—form. No party mark or designation shall appear on the ballots, or in connection with the names of candidates on any voting machine, used in the election of members of the commission. Each elector may vote for as many candidates for the commission as there are places to be filled therein; but any ballot marked for more candidates than the number of places to be filled shall not be counted for any of the candidates for which marked. The ballots shall be in form substantially as follows:

MUNICIPAL ELECTION

City and county of

(Month and day of month), 19.....

FOR COMMISSIONERS

Do not vote for more than

.....

History: En. Sec. 94, Ch. 121, L. 1923.

5520.96. Ballot—order of names. At 2 o'clock p. m. on the tenth day before any election at which members of the commission are to be nominated and elected, the clerk shall publicly determine by lot the order in which the names of candidates for election to the commission shall be printed on the ballots, or appear on any voting machine, to be used at such election.

History: En. Sec. 95, Ch. 121, L. 1923.

5520.97. Ballots—blank spaces. As many blank spaces shall be left on the ballots below the printed names of candidates for the commission as there are places to be filled therein. In any such space an elector may write the name of any eligible person, and a vote cast for such person shall be counted as though for a candidate whose name is printed on the ballots.

History: En. Sec. 96, Ch. 121, L. 1923.

5520.98. Notices—primary election—municipal election—publication.

On the tenth day prior to the municipal primary election the clerk shall cause notice thereof to be published in such daily newspaper or newspapers, printed and published within and of general circulation in the municipality as the commission may have designated, and if there be no daily newspaper then in such weekly newspaper or newspapers as may be so designated. In case the commission fail to designate such newspaper or newspapers, the clerk shall cause the notice to be published in such newspaper or newspapers printed and published within and of general circulation in the municipality as he may select. Such published notice shall contain a list of the candidates for the commission nominated as hereinbefore provided, and state the time of holding the election. On the tenth day prior to a municipal election held on the first Tuesday in June the clerk, under like conditions, shall cause a similar notice to be published concerning that election. The commission may also provide for giving notice of such elections by other means.

History: En. Sec. 97, Ch. 121, L. 1923.

5520.99. Ballots at municipal election—what names to appear. At any municipal election held for the choice of members of the commission of the first Tuesday in June following a municipal primary election there shall be printed on the ballots and placed on the voting machines the names of the candidates receiving the highest number of votes at the municipal primary election, except the names of those elected to the commission thereat, and the number of names so printed on the ballots and placed on the voting machines shall be equal to double the number of places remaining to be filled in the commission. If, by reason of their having received the same number of votes, it cannot be determined which of two or more candidates shall have his name, or their names, printed on the ballots and placed on the voting machines, then, notwithstanding the foregoing provisions of this section the names of all such candidates receiving the same number of votes shall be printed on the ballots and placed on the voting machines. The candidates for the commission at an election held on the first Tuesday in June, equal in number to the places remaining to be filled in the commission, who receive the highest number of votes shall be declared elected. A tie between two or more candidates shall be decided by lot in the presence of such candidates and under the direction of the clerk.

History: En. Sec. 98, Ch. 121, L. 1923.

NOTE.—This section does not read the same as the section included in the 1923 session laws but varies therefrom to con-

form to the wording of the enrolled bill which was misprinted in the 1923 session laws.

5520.100. Removal of commissioners—recall petitions. Any member of the commission may be removed from office by the electors of the municipality. The procedure for effecting such a removal shall be as follows:

Any elector of the municipality may make and file an affidavit with the clerk requesting that petition be issued demanding an election for the recall of any member of the commission. Any such affidavit shall state the name of the person whose removal from the commission is sought and the grounds alleged for such removal. Upon the filing of such an affi-

davit the clerk shall deliver to the elector making the affidavit copies of petition papers for demanding such an election, printed copies of which the clerk shall keep on file for distribution as herein provided. In issuing any such petition paper the clerk shall enter in a record to be kept in his office the name of the elector to whom issued, the date of issuance, the number of papers issued, and shall certify on each paper the name of the elector and the date of issuance. No petition paper shall be accepted as part of a petition unless it bear such certification of the clerk and unless filed as hereinafter provided.

History: En. Sec. 99, Ch. 121, L. 1923.

5520.101. Recall petitions—signatures—filing—amendment. A petition for a recall election to be effective must be returned and filed with the clerk within thirty days after the filing of the affidavit as provided in last preceding section, and to be sufficient must be signed by at least twenty per centum (20%) of the qualified electors of the municipality whose names appear on the official register of voters of the municipality on the date when such petition is returned and filed with the clerk. If any such petition is insufficient as originally filed it may be amended as provided in this act.

History: En. Sec. 100, Ch. 121, L. 1923.

5520.102. Recall election—notice to officer whose removal sought—time for holding. If a petition for a recall election, or an amended petition, shall be certified by the clerk to be sufficient, he shall at once submit it to the commission with his certificate to that effect and shall notify the member of the commission whose removal is sought of such action. Unless the member whose removal is sought resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than ninety nor more than one hundred and twenty days after the petition has been presented to the commission and may be held at the same time as any other election held within such period; but, if no other election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

History: En. Sec. 101, Ch. 121, L. 1923.

5520.103. Separate removals require separate petitions—nomination of successors. The question of recalling any number of members of the commission may be submitted at the same election, but as to each member whose removal is sought a separate petition shall be filed and provision shall be made for an entirely separate printed ballot. Candidates to succeed any person whose removal is sought shall be placed in nomination by petition signed, filed and verified as provided for nominating petitions for a municipal primary election; except that each petition paper shall specify that the candidate named therein is a candidate to succeed a particular person whose removal is sought.

History: En. Sec. 102, Ch. 121, L. 1923.

5520.104. Recall elections—voting machines not used—form of ballots. Voting machines shall not be used in recall elections, and the printed ballots shall be in form substantially as follows:

RECALL ELECTION

City and County of
(Month and day of month) 19.....

SHALL (name of person) BE REMOVED FROM THE COMMISSION
BY RECALL?

FOR THE RECALL OF
(Name of Person.)

AGAINST THE RECALL OF
(Name of Person.)

CANDIDATE

To succeed (name of person) if recalled. Vote for but one.

.....
.....
.....

History.: En. Sec. 103, Ch. 121, L. 1923.

5520.105. Result of votes—removal—designation of successor. If a majority of the votes cast on the question of recalling a member of the commission as hereinbefore provided be against his recall he shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall of such member he shall, regardless of any defect in the recall petition, be deemed removed from office. When a member is removed from the commission by recall the candidate to succeed such member who receives the highest number of votes shall succeed the member so removed for the unexpired term.

History: En. Sec. 104, Ch. 121, L. 1923.

5520.106. Resignation pending recall election, result of. If a person in regard to whom a recall petition is submitted to the commission shall resign from office after notice thereof no election shall be held and some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term; but the member so resigning shall not be chosen by the commission to succeed himself.

History: En. Sec. 105, Ch. 121, L. 1925.

5520.107. Limitation on filing recall petitions. No recall petition shall be filed in respect to any member of the commission within three months after he takes office nor in case of a member subjected to a recall election and not removed thereby, until at least six months after that election.

History: En. Sec. 106, Ch. 121, L. 1923.

5520.108. Moneys received by officer in course of duty belong to municipality. No person elected or appointed to any office or position under the municipal government established by this act shall be entitled to or receive for his own use any fees, emoluments, commissions or perquisites other than the salary or compensation fixed by this act or by the commission, and all such fees, emoluments, commissions and perquisites ensuing out of the

performance of official duty shall belong to the municipality and be paid into the treasury thereof at the times and in the manner provided by the general laws of the state.

History: En. Sec. 107, Ch. 121, L. 1923.

5520.109. Political participation by appointees forbidden. No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution for any political party or purpose whatever. No person shall orally or by letter solicit, or be in any manner concerned in soliciting, any assessment, subscription or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment, or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present directly or indirectly, in person or otherwise, any political assessment, subscription or contribution to, or request its payment by any person in such service.

History: En. Sec. 108, Ch. 121, L. 1923.

5520.110. Penalizing appointees for not participating in politics forbidden—appointees not to act as officers of political organization or circulate petitions. No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so, for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization, or serve as a member of a committee of any such organization, or circulate or seek signatures for any petition provided for by primary or election laws.

History: En. Sec. 109, Ch. 121, L. 1923.

5520.111. Penalty for violations. Any person who, by himself or in cooperation with one or more persons, wilfully or corruptly violates any of the provisions of sections 5520.109 and 5520.110 of this act shall be guilty of misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment, and if he be an officer or employee of the municipality he shall immediately forfeit his office or employment.

History: En. Sec. 110, Ch. 121, L. 1923.

5520.112. Commissioners not to hold other offices—forfeiture of office by commissioners and appointees on running for office. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of

the commission shall become a candidate for any public office, other than that of commissioner, he shall immediately forfeit his place on the commission; and any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: En. Sec. 111, Ch. 121, L. 1923.

5520.113. Official bonds of officers—amounts—filing. The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires so to do, shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of five thousand dollars and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality. All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

History: En. Sec. 112, Ch. 121, L. 1923.

5520.114. Oath of office—taking and filing required. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, which oath or affirmation shall be filed and kept in the office of the clerk.

History: En. Sec. 113, Ch. 121, L. 1923.

5520.115. Financial interest by officers in contracts forbidden—penalty. No officer or employee of the municipality shall have a financial interest direct or indirect, in any contract therewith, or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any wilful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

History: En. Sec. 114, Ch. 121, L. 1923.

5520.116. Existing contracts continued. All contracts entered into by the county or by any city or town therein, or on behalf of any improvement district by such county or by any such city or town, prior to the election and qualification of a commission under this act, shall continue in full force and effect subsequently thereto. Public improvements, for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this act, may there-

after be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 115, Ch. 121, L. 1923.

5520.117. Existing ordinances—order continuing and extending—publication—repeal of other ordinances. The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality, and which are of general application in such city or town, shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within ten days after the making of such order. All other ordinances and resolutions of such city or town, and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

History: En. Sec. 116, Ch. 121, L. 1923.

5520.118. Existing officers—how long continued in office. The members of the board of county commissioners of the county and members of the council of every city and town therein, holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county, shall continue in office and in the performance of their duties until the first commission shall have been elected have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county, or under the government of any city or town therein, at the date of such election, shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties, or the discontinuance of such offices or positions.

History: En. Sec. 117, Ch. 121, L. 1923.

5520.119. Resolution declaring creation of consolidated government—effective date of merger—legal status. At the first meeting of the commission whose members are first elected under the provisions of this act, such commission shall adopt a resolution reciting the filing of the petition provided for in section 5520.2, the ordering and hold of a special election as requested in such petition, the result of such election, and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality, which resolution must be in duplicate, and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of such commission must be filed in the office of the clerk of the commission and the other copy thereof must be transmitted to and filed in the office of the secretary of state. Immediately upon the adoption of such resolution by the commission the separate corporate existence

of the county and of each and every city and town therein shall be deemed to be consolidated and merged into one municipal corporation under the name selected, designated and adopted as provided in this act, and such consolidated municipality shall thereupon be deemed to have succeeded to, and to possess and own all of the property and assets of every kind and description and shall, save as herein otherwise provided, become responsible for all of the obligations and liabilities of the county, cities and towns so consolidated and merged. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislative assembly, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

History: En. Sec. 118, Ch. 121, L. 1923.

5520.120. Transition of government—commissioners' powers. The commission shall have power to make all necessary regulations, not inconsistent with this act, for the transition from the several governments of and within the county to the government provided by this act, including the transfer to the treasury of the consolidated city and county of all funds and moneys of such several governments.

History: En. Sec. 119, Ch. 121, L. 1923.

5520.121. Effect of partial unconstitutionality of act. If any clause, sentence, paragraph or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

History: En. Sec. 120, Ch. 121, L. 1923.

CHAPTER 410

THE ENACTMENT AND EFFECT OF THE CODES

- Section 5521. Construction of the codes with relation to laws passed.
 5522. Construction of the codes with relation to each other.
 5525. Conflicting sections of the same chapter—which to prevail.
 5526. Repeal of repealed statutes.
 5528. Arrangement of codes not indicative of legislative intention—annotations not part of statutes.

5521. Construction of the codes with relation to laws passed. With relation to the laws passed at the session of the legislative assembly at which the political code, civil code, code of civil procedure, and penal code are passed, such codes must be construed as though each had been passed on the last day of the session.

History: En. Sec. 5160, Pol. C. 1895; re-en. Sec. 3553, Rev. C. 1907; re-en. Sec. 5521, R. C. M. 1921. Cal. Pol. C. Sec. 4478.

Operation and Effect

While section 8233, revised codes of 1921, appears in the civil code, and section 9467 in the Code of Civil Procedure; both

referring to the right of creditors to enforce obligations secured by lien, they must be deemed to have been passed at the same moment of time (this section), and it must be presumed that it was intended that both should be operative and each should govern as to the title in which it is found, and courts must construe them

together and reconcile them, if possible.
Barth v. Ely, 85 M 310, 322, 278 P 1002.

References

Cited or applied as section 5160, political code, in *Steele v. Gilpatrick*, 18 M 453, 454, 45 P 1089; *Dowty v. Pittwood*, 23 M 113, 116, 57 P 727.

5522. Construction of the codes with relation to each other. With relation to each other, the provisions of the four codes must be construed as though all such codes had been passed at the same moment of time, and were parts of the same statute.

History: En. Sec. 5161, Pol. C. 1895; re-en. Sec. 3554, Rev. C. 1907; re-en. Sec. 5522, R. C. M. 1921. Cal. Pol. C. Sec. 4480.

References

Cited or applied as section 5161, political code, in *Steele v. Gilpatrick*, 18 M

453, 454, 45 P 1089; *State ex rel. Nissler v. Donlan*, 32 M 256, 264, 80 P 244; as section 3554, revised codes, in *Brown v. Foster*, 48 M 114, 119, 135 P 993; *State v. McGraw*, 74 M 152, 158, 240 P 812; *Barth v. Ely*, 85 M 310, 322, 278 P 1002; *State v. Zorn*, 99 M 63, 67, 41 P 2d 513.

5523-5524. Omitted.

5525. Conflicting sections of the same chapter—which to prevail. If conflicting provisions are found in different sections of the same chapter, the provisions of the section last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter.

History: En. Sec. 5165, Pol. C. 1895; re-en. Sec. 3558, Rev. C. 1907; re-en. Sec. 5525, R. C. M. 1921. Cal. Pol. C. Sec. 4484.

Operation and Effect

Where a clause seems to have crept into the body of an act as the result of misconception or ill-advised amendment, and it cannot be given effect without violence to the clear and plain intent of the law, considered in its entirety, it must be regarded as an inadvertence, and as not militating against the legislative intent. *State ex rel. Seres v. District Court*, 19 M 501, 506, 48 P 1104; *State ex rel. Kehoe v. Stromme*, 49 M 25, 28, 139 P 1002; *State ex rel. Eagye v. Bawden*, 51 M 357, 364, 152 P 761.

The circumstance that a section of an act is the last word upon the subject is not sufficient to prevail over all other provisions of the act indicating a differ-

ent legislative intent. *State ex rel. Kehoe v. Stromme*, 49 M 25, 28, 139 P 1002.

The rule enunciated by this section, that where conflicting provisions are found in different sections of the same chapter, those of the last in numerical order must prevail, has no application where the sections were passed at different times. *State v. Zorn*, 99 M 63, 65, 41 P 2d 513.

References

Cited or applied as section 5165, political code, in *State ex rel. Aachen & Munich F. Ins. Co. v. Rotwitt*, 17 M 41, 49, 41 P 1004; *State v. Courtney*, 27 M 378, 384, 71 P 308; *In re Scheuer's Estate*, 31 M 606, 617, 79 P 244; *State ex rel. Nissler v. Donlan*, 32 M 256, 264, 80 P 244; *Clark v. Maher*, 34 M 391, 400, 87 P 272; as section 3558, revised codes, in *Morse v. Granite County*, 44 M 78, 96, 119 P 286.

5526. Repeal of repealed statutes. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R. C. M. 1921. Cal. Pol. C. Sec. 4504.

References

Cited or applied as section 5180, polit-

ical code, in *Dowty v. Pittwood*, 23 M 113, 117, 57 P 727; as section 3560, revised codes, in *State v. Bradshaw*, 53 M 96, 100, 161 P 710.

5527. Omitted.

5528. Arrangement of codes not indicative of legislative intention—annotations not part of statutes. The arrangement and classification of the

several parts of said codes have been made for the purpose of convenience and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom, nor shall annotations be deemed any part of the statutes.

History: En. Sec. 5182, Pol. C. 1895; re-en. Sec. 3562, Rev. C. 1907; re-en. Sec. 5528, R. C. M. 1921.

Operation and Effect

The division of the codes into parts, titles, chapters, articles, and sections is a mere device for convenience, and no implication or presumption of a legislative construction is to be drawn therefrom. Brown v. Foster, 48 M 114, 119, 135 P 993.

References

Cited or applied as section 5182, political code, in Campana v. Calderhead, 17

M 548, 549, 44 P 83; Chicago Title & Trust Co. v. O'Marr, 18 M 568, 578, 46 P 809, 47 P 4; Mutual Benefit Life Ins. Co. v. Winne, 20 M 20, 35, 49 P 446; Kimpton v. Jubilee Placer Co. 22 M 107, 108, 55 P 918; Dowty v. Pittwood, 23 M 113, 117, 57 P 727; State ex rel. McGinnis v. Dickinson, 26 M 391, 394, 68 P 468, Stadler v. City of Helena, 46 M 128, 132, 127 P 454; as section 3562, revised codes, in State ex rel. Brandegge v. Clements, 52 M 57, 59, 155 P 271; State ex rel. Wooten v. District Court, 57 M 517, 524, 189 P 233; State v. District Court, 61 M 558, 567, 202 P 756.

5529-5531. Omitted.

CHAPTER 411

THE REVISION OF THE CODES

Section 5531.1.	Appointment of code commissioner.
5133.2.	Designation and plan of codes.
5531.3.	Historical notes.
5531.4.	Annotations.
5531.5.	Indexes.
5531.6.	Authority of commissioner as to revision, arrangement and recommendations.
5531.7.	Time limit for completion of preliminary work.
5531.8.	Oath of office.
5531.9.	Supervision by justices of the supreme court.
5531.10.	Completion of codification authorized.

5531.1. Appointment of code commissioner. The supreme court of Montana is hereby authorized and directed to appoint, not later than thirty (30) days from and after the passage and approval of this act, some competent and qualified person as code commissioner to compile and revise all the laws of the state of Montana of a permanent and general nature now in force and effect, including the acts of the twenty-third legislative assembly of said state and all initiative measures.

History: En. Sec. 1, Ch. 89, L. 1933.

5531.2. Designation and plan of codes. The laws to be compiled and arranged by said code commissioner shall be known and designated as the Revised Codes of Montana of 1935. Said compilation of laws, when completed and certified to by said code commissioner, shall constitute the official and authorized codes of law of said state and may for all purposes be cited by the name "Revised Codes of Montana of 1935" or by the abbreviation "R. C. M. 1935." In addition to the statute laws of the state, said code shall also contain the Magna Charta, the Declaration of Independence, the Constitution of the United States as amended, the Organic Act of the Territory of Montana, the Enabling Act, the Constitution of Montana and the laws of congress relating to the authentication of laws and records.

History: En. Sec. 2, Ch. 89, L. 1933.

5531.3. Historical notes. It shall be the duty of the code commissioner to include in the Revised Codes of Montana of 1935 all the historical notes which now appear in the Revised Codes of Montana of 1921 and to supplement the same so as to show all the subsequent history of the several sections to be contained in said compilation.

History: En. Sec. 3, Ch. 89, L. 1933.

5531.4. Annotations. Said code shall be annotated by proper and appropriate reference to all decisions of the supreme court of Montana, applying, construing, commenting upon or referring to any of the laws or to the Constitution of Montana, up to the first day of January, 1935, and as much later as it may be reasonably practicable to prepare such annotations before delivery of the copy for said code to the printer. Said code shall be further annotated by proper and appropriate reference to all decisions of the federal courts construing any of the laws or the Constitution of Montana. These annotations shall include all decisions to the present date and as much later as it may be reasonably practicable to prepare such annotations for the printer.

History: En. Sec. 4, Ch. 89, L. 1933; amd. Sec. 1, Ch. 32, L. 1935.

5531.5. Indexes. A complete new workable index for the entire Revised Codes of 1935 and a separate index for the Constitution of Montana and the Constitution of the United States shall be prepared by the code commissioner. Said indexes shall be alphabetically arranged and of sufficient particularity to refer to each section and subject contained in said codes.

History: En. Sec. 5, Ch. 89, L. 1933.

5531.6. Authority of commissioner as to revision, arrangement and recommendations. In compiling the revision of the laws of Montana hereby authorized, the code commissioner shall have authority to rearrange the chapters in the several codes, to renumber and transpose sections therein and to make other and different chapter designations and section title lines. Nothing herein contained shall be deemed to require the code commissioner to make recommendations as to new laws materially differing from existing statutes and involving the exercise of legislative discretion for their enactment. Subject, however, to the foregoing limitation, it shall be the duty of the code commissioner in compiling said codes to note all inconsistencies, ambiguities, imperfections, implied repeals and other defects in the existing laws of Montana and to submit to the next regular legislative assembly of the state bills for the correction of the same.

History: En. Sec. 6, Ch. 89, L. 1933.

5531.7. Time limit for completion of preliminary work. The code commissioner shall enter upon the performance of the work herein specified promptly upon his appointment by the court and shall complete the entire work required by this act, by January 1, 1935. In connection with the foregoing limit as to time however, it is expressly recognized that in order for the commissioner to include the 1935 Session Laws and to index the same in their proper place in the codes, and in order for the legislative assembly to act upon the bills herein required to be submitted to it by the

commissioner, it will be necessary to continue the work of said commissioner after the adjournment of the 1935 assembly. Such work, necessarily to be performed after January 1, 1935, is not within the terms of this act, but the appointment of the code commissioner shall continue through the final completion and publication of the codes under such terms as the legislative assembly shall prescribe.

History: En. Sec. 7, Ch. 89, L. 1933.

5531.8. Oath of office. Before entering upon the discharge of his duties, the code commissioner shall take and subscribe the oath of office provided by the constitution, which oath shall be filed with the secretary of state.

History: En. Sec. 8, Ch. 89, L. 1933.

5531.9. Supervision by justices of the supreme court. In the performance of the work herein specified, the code commissioner shall at all times be under the general control and supervision of the justices of the supreme court of Montana, who may, in their discretion direct changes in the general plan and contents of the Revised Codes of Montana of 1935, not inconsistent with the general purpose and scope of this act.

History: En. Sec. 9, Ch. 89, L. 1933.

5531.10. Completion of codification authorized. The code commissioner appointed under the authority of section 5531.1 to section 5531.9, inclusive, is hereby authorized and directed to continue and complete the re-codification of the laws of Montana, and to include therein the laws of the twenty-fourth legislative assembly. The codification shall be completed according to the plan and designation authorized by section 5531.1 to section 5531.9, inclusive.

History: En. Sec. 1, Ch. 13, L. 1935.

5532-5553. Omitted.

CHAPTER 412

THE PUBLICATION OF THE CODES

- Section 5553.1. Contract for publication of codes.
 5553.2. Contract—to whom let—delivery of codes.
 5553.3. Time for performance of contract.
 5553.4. Number of volumes—style of publication.
 5553.5. Publisher to supply for private use.
 5553.6. Payments—how made.
 5553.7. Bond of publisher.
 5553.8. Distribution of codes.

5553.1. Contract for publication of codes. The state board of examiners is hereby authorized to contract for the printing of the Revised Codes of Montana of 1935; said contract shall be advertised and let in the same manner as provided by law for the letting of contracts for state printing.

History: En. Sec. 1, Ch. 161, L. 1935.

5553.2. Contract—to whom let—delivery of codes. The state board of examiners shall contract for the publication of said work on the terms most expeditious and advantageous to the state. The contract shall specify that

a definite number of sets of said code shall be printed and delivered to the secretary of state of Montana, for the purpose of distribution as hereinafter provided. The board may exercise its discretion as to the number of sets of said code which shall be printed and delivered to the state, taking into consideration the cost and necessity for the same. Provided, however, that the contract shall not call for more than one thousand sets of said code.

History: En. Sec. 2, Ch. 161, L. 1935.

5553.3. Time for performance of contract. The state board of examiners shall fix the time to be allowed for the completion of the work, and the performance of said work within the time so fixed shall constitute a part of the terms of the contract.

History: En. Sec. 3, Ch. 161, L. 1935.

5553.4. Number of volumes—style of publication. The number of volumes, the style and the size of type to be used, the quality of paper and workmanship and the form and plan of the arrangement for the Revised Codes of Montana of 1935, shall be designated by the justices of the supreme court.

History: En. Sec. 4, Ch. 161, L. 1935.

5553.5. Publisher to supply for private use. The contract shall require the publisher to keep on hand for sale at a reasonable price to be fixed by the state board of examiners, a sufficient number of copies of said codes to supply all demands for the same for private use in the state of Montana for a period of ten years, and also to supply all future demands of the state of Montana for the same period.

History: En. Sec. 5, Ch. 161, L. 1935.

5553.6. Payments—how made. Whenever the secretary of state of Montana shall issue his certificate that he has received all of the codes, printed and bound in accordance with said contract, the state auditor is hereby directed to draw his warrant in favor of the publishers of said code for the amount of money due under the said contract, and the state treasurer is hereby authorized to pay said warrant out of any moneys in his hands appropriated for said purpose by the legislature. The state board of examiners is also hereby authorized in its discretion to advance to the publishers of said work partial payments upon said contract during the progress of the work, whenever in its judgment the making of such advance is necessary and proper to promote the progress of said publication. All payments of expenses incident to the publication and distribution, not made to the publisher, shall be made as authorized and directed by the state board of examiners.

History: En. Sec. 6, Ch. 161, L. 1935.

5553.7. Bond of publisher. The publisher to whom said contract is awarded must execute to the state of Montana a good and sufficient bond to be approved by the state board of examiners in the sum of ten thousand dollars conditioned for the faithful performance of said contract.

History: En. Sec. 7, Ch. 161, L. 1935.

5553.8. Distribution of codes. The secretary of state, upon receipt of said published codes shall distribute the same, or so many of them as may be necessary, in the following manner, to-wit:

To each department of the state government of Montana, one copy.

To each member of the twenty-fourth legislative assembly, one copy.

To the state law library, two copies.

To the library of congress, two copies.

To the state historical and miscellaneous library, one copy.

To the state law librarian, for the purpose of exchanges with libraries, universities and other institutions, such number of copies, not to exceed one hundred, as may be required by him.

To each of the component institutions of the University of Montana, one copy.

To each of the United States district judges for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one copy.

To the county clerk of each county, three copies, for the use of the various county officials.

To each county attorney and to each clerk of the district court, one copy.

The secretary of state may further distribute the Revised Codes of Montana of 1935 at his discretion, to other departments of government not herein enumerated, when the same are deemed absolutely necessary, and may exchange new sets for worn-out sets, when the latter are returned to his office.

Hitsory: En. Sec. 8, Ch. 161, L. 1935.

5554-5652. Omitted.

CHAPTER 413

EMPLOYMENT OF SOLDIERS AND SAILORS

Section 5653. Preference of soldiers and sailors in public employment.

5654. County clerks to record certificates of discharge.

5653. Preference of soldiers and sailors in public employment. In every public department, and upon all public works of the state of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Phillipine Insurrection, and of the late war with Germany and her allies, and any disabled civilian recommended by the State Rehabilitation Bureau, shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved; provided, however, that none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take up arms in the defense of the United States; provided, however, that no person, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and, provided, further, that no person who has not been a resident of Montana for at least one (1) year

immediately preceding an appointment shall be entitled to such preference; provided further, that for city or county employment no preference will be granted unless applicant under this act is also a resident of the city or town or county in which employment is sought.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1927.

5654. County clerks to record certificates of discharge. It shall be the duty of the county clerk of any county of the state of Montana to record, without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor, or marine who served with the United States forces in any of said wars.

History: En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R. C. M. 1921.

CHAPTER 414

UNIFORM VETERANS' GUARDIANSHIP ACT

Section 5654.1.	Definition of terms.
5654.2.	Guardian for veteran—when appointed.
5654.3.	Number of wards of which person may be guardian—limit—exceptions.
5654.4.	Petition for appointment of guardian—time for filing—contents.
5654.5.	Minor's guardian—proof of necessity of appointment.
5654.6.	Guardian for mentally incompetent—proof of necessity for.
5654.7.	Notice of petition to be given.
5654.8.	Inquiry into qualifications of applicant—bond of guardian.
5654.9.	Accounts of guardians—requirement of—hearings on.
5654.10.	Failure to account subjects guardian to removal.
5654.11.	Compensation of guardian—premium on official bond.
5654.12.	Investment of funds.
5654.13.	Guardian to support ward only unless otherwise ordered by court.
5654.14.	Certified copies of public records to be free to bureau.
5654.15.	Commitment to veterans' hospital—powers of hospital officials—notice of commitment proceedings.
5654.16.	Termination of guardianship.
5654.17.	Construction of act.
5654.18.	Citation of act.
5654.19.	Interpretation and construction of act.
5654.20.	Invalidity of part of act—effect of.
5654.21.	Modification of existing laws to effectuate act.

5654.1. Definition of terms. As used in this act:

The term person includes a partnership, corporation or association.

The term bureau means the United States Veterans' Bureau or its successor.

The terms estate and income shall include only moneys received by the guardian from the bureau and all earnings, interest and profits derived therefrom.

The term benefits shall mean all moneys payable by the United States through the bureau.

The term director means the director of the United States Veterans' Bureau or his successor.

The term ward means a beneficiary of the bureau.

The term guardian as used herein shall mean any person acting as a fiduciary for a ward.

History: En. Sec. 1, Ch. 61, L. 1929.

NOTE.—Uniform state law.

Sections 5654.1. through 5654.21, with a minor difference in wording between section 5654.1 and section 21 of the approved act, are enactments of sections 1 through 21 of the "Uniform Veterans' Guardianship Act" approved by the National Conference of Commissioners on

Uniform State Laws in 1928 and adopted in the states of Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia and Wyoming.

5654.2. Guardian for veteran—when appointed. Whenever, pursuant to any law of the United States or regulation of the bureau, the director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.

History: En. Sec. 2, Ch. 61, L. 1929.

5654.3. Number of wards of which person may be guardian—limit—exceptions. Except as hereinafter provided it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five (5) wards. In any case, upon presentation of a petition by an attorney of the bureau under this section alleging that a guardian is acting in a fiduciary capacity for more than five (5) wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting from such guardian and shall discharge such guardian in said case.

The limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five (5) wards if they are all members of the same family.

History: En. Sec. 3, Ch. 61, L. 1929.

5654.4. Petition for appointment of guardian—time for filing—contents. A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such petition within thirty (30) days after mailing of notice by the bureau to the last known address of such person indicating the necessity for the same a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the bureau and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the bureau in accordance with the laws and regulations governing the bureau.

History: En. Sec. 4, Ch. 61, L. 1929.

5654.5. Minor's guardian—proof of necessity of appointment. Where a petition is filed for the appointment of a guardian of a minor ward a certificate of the director, or his representative, setting forth the age of such minor as shown by the records of the bureau and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the bureau, shall be prima facie evidence of the necessity for such appointment.

History: En. Sec. 5, Ch. 61, L. 1929.

5654.6. Guardian for mentally incompetent—proof of necessity for. Where a petition is filed for the appointment of a guardian of a mentally incompetent ward a certificate of the director, or his representative, setting forth the fact that such person has been rated incompetent by the bureau on examination in accordance with the laws and regulations governing such bureau; and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the bureau, shall be prima facie evidence of the necessity for such appointment.

History: En. Sec. 6, Ch. 61, L. 1929.

5654.7. Notice of petition to be given. Upon the filing of a petition for the appointment of a guardian, under the provisions of this act, the court shall cause such notice to be given as provided by law.

History: En. Sec. 7, Ch. 61, L. 1929.

5654.8. Inquiry into qualifications of applicant—bond of guardian. Before making an appointment under the provisions of this act the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this state. The court shall have power from time to time to require the guardian to file an additional bond. Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

History: En. Sec. 8, Ch. 61, L. 1929.

5654.9. Accounts of guardians—requirement of—hearings on. Every guardian, who shall receive on account of his ward any moneys from the bureau, shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the bureau having jurisdiction over the area in which such court is located. The court shall fix a time and place for

the hearing on such account not less than fifteen (15) days nor more than thirty (30) days from the date of filing same and notice thereof shall be given by the court to the aforesaid bureau office not less than fifteen (15) days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.

History: En. Sec. 9, Ch. 61, L. 1929.

5654.10. Failure to account subjects guardian to removal. If any guardian shall fail to file any account of the moneys received by him from the bureau on account of his ward within thirty (30) days after such account is required by either the court or the bureau, or shall fail to furnish the bureau a copy of his accounts as required by this act, such failure shall be grounds for removal.

History: En. Sec. 10, Ch. 61, L. 1929.

5654.11. Compensation of guardian—premium on official bond. Compensation payable to guardians shall not exceed five per cent (5%) of the income of the ward during any year. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau in the manner provided in section 5654.9. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.

History: En. Sec. 11, Ch. 61, L. 1929.

5654.12. Investment of funds. Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by law or approved by the court.

History: En. Sec. 12, Ch. 61, L. 1929.

5654.13. Guardian to support ward only unless otherwise ordered by court. A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the bureau in the manner provided in section 5654.9.

History: En. Sec. 13, Ch. 61, L. 1929.

5654.14. Certified copies of public records to be free to bureau. Whenever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such bureau with a certified copy of such record.

History: En. Sec. 14, Ch. 61, L. 1929.

5654.15. Commitment to veterans' hospital—powers of hospital officials—notice of commitment proceedings. Whenever it appears that a veteran of any war, military occupation or expedition is eligible for treatment in a

United States Veterans' Bureau Hospital and commitment to such hospital is necessary for the proper care and treatment of such veteran, the courts of this state are hereby authorized to communicate with the official in charge of such hospital with reference to available facilities and eligibility, and upon a receipt of a certificate from the official in charge of such hospital the court may then direct such veteran's commitment to such United States Veterans' Bureau Hospital. Thereafter such veteran upon admission shall be subject to the rules and regulations of such hospital and the officials of such hospital shall be vested with the same powers now exercised by superintendents of state hospitals for mental diseases within this state with reference to the retention of custody of the veteran so committed. Notice of such pending proceedings shall be furnished the person to be committed and his right to appear and defend shall not be denied.

History: En. Sec. 15, Ch. 61, L. 1929.

5654.16. Termination of guardianship. When a minor ward for whom a guardian has been appointed under the provisions of this act or other laws of this state shall have attained his or her majority, and if incompetent shall be declared competent by the bureau and the court, and when any incompetent ward, not a minor, shall be declared competent by said bureau and the court, the guardian shall upon making a satisfactory accounting be discharged upon a petition filed for that purpose.

History: En. Sec. 16, Ch. 61, L. 1929.

5654.17. Construction of act. This act shall be construed liberally to secure the beneficial intents and purposes thereof, and shall apply only to beneficiaries of the bureau.

History: En. Sec. 17, Ch. 61, L. 1929.

5654.18. Citation of act. This act may be cited as the Uniform Veterans' Guardianship Act.

History: En. Sec. 18, Ch. 61, L. 1929.

5654.19. Interpretation and construction of act. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 19, Ch. 61, L. 1929.

5654.20. Invalidity of part of act—effect of. The invalidity of any portion of this act shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

History: En. Sec. 20, Ch. 61, L. 1929.

5654.21. Modification of existing laws to effectuate act. All laws or parts of laws relating to guardianship of minors and incompetents and to commitment of insane persons are modified and amended to effectuate this act.

History: En. Sec. 21, Ch. 61, L. 1929.

CHAPTER 415

VETERANS' WELFARE FUND AND COMMISSION

- Section 5655. Board of examiners authorized to borrow money.
5656. Bonds or warrants to be issued.
5657. Faith of the state pledged.

- 5658. Purpose of act to aid soldiers.
- 5659. Veterans' welfare fund.
- 5660. Veterans' welfare commission.
- 5661. Disbursement of money.
- 5662. Certain appropriation to be returned to general fund.
- 5663. Duty of officers to aid veterans' welfare commission.
- 5664. Record and audit of expenditures.
- 5665. Tax levy to pay interest and redeem bonds.
- 5666. Sale of bonds for veterans' welfare fund.
- 5667. Disposal of moneys.
- 5668. Appropriation.

5655. Board of examiners authorized to borrow money. The board of examiners of the state of Montana is hereby directed, authorized and empowered to borrow any sum of money in an amount not exceeding two hundred thousand dollars upon the credit of the state of Montana, and there is hereby appropriated two hundred thousand dollars, or so much thereof as may be necessary, out of the receipts of any such loan or loans so made, under the provisions of this act, the United States now being at war, to suppress insurrection, repel invasion, defend the state, and to assist in defending the United States.

History: En. Sec. 1, Ch. 105, L. 1919; re-en. Sec. 5655, R. C. M. 1921.

5656. Bonds or warrants to be issued. The board of examiners of the state of Montana is hereby empowered and authorized to issue bonds or warrants in a sum not exceeding two hundred thousand dollars, at an interest bearing rate not to exceed five per cent. per annum, and upon such other terms and conditions as such board may deem wise, proper and necessary to obtain money sufficient to meet the purposes of this act; provided, however, that the life of any such bonds issued shall not be greater than ten years, and may be redeemed at any interest paying period or within thirty days thereafter.

History: En. Sec. 2, Ch. 105, L. 1919; re-en. Sec. 5656, R. C. M. 1921.

5657. Faith of the state pledged. Any debt created under the preceding section shall be binding on the state of Montana, and for the payment thereof, with interest thereon, the faith of the state is irrevocably pledged.

History: En. Sec. 3, Ch. 105, L. 1919; re-en. Sec. 5657, R. C. M. 1921.

5658. Purpose of act to aid soldiers. The purpose of this act is for the encouragement, aid and assistance of soldiers of the United States going to and returning from the war in which the United States is fighting Germany and her allies; to get jobs and employment, to provide for the education, training and comfort, and the physical and material well-being of those who have been in the military and naval service of the United States during the war.

History: En. Sec. 4, Ch. 105, L. 1919; re-en. Sec. 5658, R. C. M. 1921.

5659. Veterans' welfare fund. That the money to be derived and appropriated under the provisions of this act shall be known as the veterans' welfare fund, and shall be kept separately as such and credited by the state treasurer to such fund, and be paid out by the state treasurer on warrants issued by the state auditor on orders drawn by the veterans' welfare commission.

History: En. Sec. 5, Ch. 105, L. 1919; re-en. Sec. 5659, R. C. M. 1921.

5660. Veterans' welfare commission. There is hereby created a commission to be known as the veterans' welfare commission, to consist of three members who shall be appointed by and removable at the pleasure of the governor. Each commissioner shall serve without compensation, but shall be allowed his necessary expenses. The commission shall organize immediately after its appointment, and select one of its number as chairman and one as secretary, and may employ such persons as necessary to assist in its work, and expend such of the money appropriated by this act as it may deem necessary to carry out the purpose of this act.

History: En. Sec. 6, Ch. 105, L. 1919; re-en. Sec. 5660, R. C. M. 1921.

5661. Disbursement of money. It shall be the duty of the veterans' welfare commission to disburse the money appropriated by this act for the purposes enumerated in section 5658 of this code, and for the general welfare of the veterans and the soldiers, sailors and marines of the United States in the war with Germany and her allies, who at the time of their enlistment or induction were bona fide residents of the state of Montana, or who may hereafter become bona fide residents of the state of Montana. The commission may disburse the money provided by this act in such manner and for such purpose as in its judgment will best facilitate and promote the return of such veterans, soldiers, sailors and marines to civil life, and to keep a high morale in the fighting forces of the United States in the war with Germany and her allies, and bring contentment and satisfaction among the people of the state of Montana, and especially among the veterans, soldiers, sailors and marines within the borders of this state, and to promote this end the commission may establish employment agencies, furnish employment, provide for institutions of any sort, assist the United States in any reclamation or reconstruction work that congress may provide for, make grants or loans, or expend such money in any manner whatsoever for such persons, and the enumeration of specific purposes shall not be construed to exclude other purposes, but the manner in which such funds shall be expended shall be entirely in the discretion of the commission.

History: En. Sec. 7, Ch. 105, L. 1919; re-en. Sec. 5661, R. C. M. 1921.

5662. Certain appropriation to be returned to general fund. The commission is hereby ordered and instructed to return to the general fund of the state treasury out of the money appropriated by this act an amount equal to all of the money expended under the authority of house bill No. 262 of the sixteenth legislative assembly.

History: En. Sec. 8, Ch. 105, L. 1919; re-en. Sec. 5662, R. C. M. 1921.

NOTE.—House bill No. 262 above referred to is an appropriation bill found on p. 595, laws 1919.

5663. Duty of officers to aid veterans' welfare commission. It shall be the duty of all state, county and municipal officers to render such aid to the veterans' welfare commission as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 9, Ch. 105, L. 1919; re-en. Sec. 5663, R. C. M. 1921.

5664. Record and audit of expenditures. The veterans' welfare commission shall keep proper records of all expenditures, which shall be audited by the state board of examiners.

History: En. Sec. 10, Ch. 105, L. 1919; re-en. Sec. 5664, R. C. M. 1921.

5665. Tax levy to pay interest and redeem bonds. There is hereby levied upon all property in the state liable to taxation for the year 1919 an ad valorem tax of one-twentieth mill on each dollar of the assessed value of all such property, and there is hereby levied upon all property in the state liable to taxation for the year 1920, an ad valorem tax of one-twentieth mill on each dollar of the assessed value of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of bonds or warrants issued under the provisions of this act.

History: En. Sec., 11, Ch. 105, L. 1919; re-en. Sec. 5665, R. C. M. 1921.

5666. Sale of bonds for veterans' welfare fund. The state board of examiners be, and it is hereby authorized and directed to sell the unsold portion of the issue of two hundred thousand dollars of bonds or warrants authorized by chapter 105 of the laws of the regular session of the sixteenth legislative assembly, and to deliver the proceeds derived from the sale of said bonds or warrants to the state treasurer, who is hereby directed to place said moneys in the veterans' welfare fund.

History: En. Sec. 1, Ch. 99, L. 1921; re-en. Sec. 5666, R. C. M. 1921.

5667. Disposal of moneys. Whereas, a doubt might be suggested as to whether the appropriation, made by chapter 105 of the regular session of the sixteenth legislative assembly of the two hundred thousand dollars authorized by said chapter to be raised by the sale of bonds or warrants of the state of Montana, will be ineffective under section 12 of article XII of the constitution of Montana, after two years, or will continue of its own force until the expenditure of all of said moneys, or until the purpose of said act has been fully carried out; and,

Whereas, it is the intention of the legislative assembly by this act to make certain the continued availability of the unexpended portion of said two hundred thousand dollars, for the purpose specified in said chapter 105, without in any way or manner limiting the effect of the appropriation contained in said chapter 105 of the said regular session of said sixteenth legislative assembly. Be it further enacted:

That all of the unexpended moneys now remaining in said veterans' welfare fund, and all moneys hereafter derived from the sale of bonds or warrants authorized by chapter 105 of the regular session of the sixteenth legislative assembly, and by the preceding section, be, and they are hereby appropriated for the use of the veterans' welfare commission in carrying out the provisions of said chapter 105 of said regular session of said sixteenth legislative assembly, and the state treasurer is hereby authorized and directed to disburse any moneys now in or hereafter coming into said veterans' welfare fund upon warrants issued by the state auditor under the direction of the state board of examiners for the use of said veterans' welfare commission.

History: En. Sec. 2, Ch. 99, L. 1921; re-en. Sec. 5667, R. C. M. 1921.

5668. Appropriation. There be and is hereby appropriated, in addition to the moneys appropriated by the preceding section, the sum of fifty thousand dollars, or so much thereof as may be necessary, out of any moneys in the state treasury not otherwise appropriated, for the use of the

veterans' welfare commission in carrying out the provisions of chapter 105 of the regular session of the sixteenth legislative assembly; the moneys appropriated by this section to be used only after the moneys realized from the sale of bonds or warrants of said issue of two hundred thousand dollars authorized by said chapter 105 and by section 5666 of this code shall have been exhausted; and the state treasurer is hereby directed to disburse the moneys appropriated by this section upon warrants issued by the state auditor under the direction of the state board of examiners for the use of said veterans' welfare commission.

History: En. Sec. 3, Ch. 99, L. 1921; re-en. Sec. 5668, R. C. M. 1921.

CHAPTER 416

BONDS OF TAXING UNIT OF STATE—PREFERENCE OF AMORTIZATION BONDS—NOTICE OF SALE—FISCAL AGENCIES FOR PAYMENT OF BANKS.

- Section 5668.1. Amortization bonds preferred on bonding of state or taxing districts.
 5668.2. Amortization bonds and serial bonds defined.
 5668.3. Matters to be considered on bids for bonds—interest.
 5668.4. Statement of preference of amortization bonds to be included in notice of sale.
 5668.5. Copy of notice of sale to be sent register of state lands.
 5668.6. Governor to designate fiscal agencies for bonds.
 5668.7. Bond required of fiscal agencies.
 5668.8. Redemption money may be deposited with fiscal agencies.
 5668.9. Cancellation of bonds and coupons on receipt of redemption moneys by fiscal agencies.
 5668.10. Auditor to be notified by bonding districts of fiscal agents—auditor to advise governor—notice of place of payment.
 5668.11. Bonding district not responsible for funds remitted to fiscal agents.
 5668.12. Liability of treasurer neglecting to perform duty under act.
 5668.13. Change of fiscal agency by governor—notice.

5668.1. Amortization bonds preferred on bonding of state or taxing districts. Whenever the state of Montana, or any county, city, town, school district, or any other taxing unit in the state of Montana having the power to issue and negotiate bonds, does hereafter issue its bonds, such bonds shall be payable on the amortization plan if bonds in this form can be sold and disposed of at a reasonable rate of interest. If amortization bonds can not be negotiated at such reasonable rate of interest, advantageous to the people for whose benefit the same are issued, then in such case, serial bonds may be issued in place of amortization bonds.

History: En. Sec. 1, Ch. 38, L. 1923.

Operation and Effect

Held, that chapter 38, laws of 1923, (this section), providing that the state, municipal corporations or districts in issuing bonds shall give preference to amortization bonds and accept serial bonds only when the former cannot be negotiated to good advantage, is inapplicable to the issuance of irrigation district bonds, and that the provisions of the irrigation law (secs. 7210-7212 and 7214), dealing with

the subject specially, are controlling. *Walden v. Bitter Root Irr. Dist.*, 68 M 281, 292, 217 P 646.

Held, that chapter 38, laws of 1923, declaring that when the state or a subdivision thereof issues bonds they shall be made payable on the amortization plan unless they cannot be negotiated at a reasonable rate of interest in which event serial bonds may be issued in their place, is not retroactive. *Educational Bonds Case*, 68 M 526, 527 et seq., 219 P 637.

5668.2. Amortization bonds and serial bonds defined. 1. The term "amortization bonds" is hereby defined as meaning that kind of bonds on which part of the principal is required to be paid each time interest becomes due and payable, which part payment on the principal increases at each suc-

ceeding installment in the same amount that interest payment decreases, so that the combined amount due on principal and interest on each succeeding due date remains the same until the bond is paid in full.

2. The term "serial bonds" is hereby defined as meaning that form of bonds under which one or more individual bonds become due and must be paid at regular intervals during the term for which the bonds were issued, so that the last bond will be taken up and paid at the expiration of the term for which the bonds were issued.

History: En. Sec. 2, Ch. 38, L. 1923.

5668.3. Matters to be considered on bids for bonds—interest. In considering bids for various classes of bonds, the board or officers negotiating the same, shall take into account not only the rate of interest offered or demanded on the various classes, but also what rate of interest can be realized on such sinking funds as may be required for the payment of serial bonds, and also every other known element affecting the total cost of the bond when paid in full. That kind of bond shall be issued which in the totality of its effect is the most advantageous to the borrower. Provided, however, that this act shall not be so construed as to authorize a higher rate of interest on any kind or class of bond than six per centum per annum.

History: En. Sec. 3, Ch. 38, L. 1923.

5668.4 Statement of preference of amortization bonds to be included in notice of sale. The notice given of the sale of any of the bonds covered by sections 5668.1 and 5668.2 shall have included therein information to the effect that amortization bonds are the first choice and that serial bonds are the second choice. The inclusion of this information as to the order of preference of these kind of bonds in the notice of sale, shall be deemed to be an essential part of such notice, and the omission of this information shall invalidate the issuance of the bonds under such notice.

History: En. Sec. 4, Ch. 38, L. 1923.

5668.5. Copy of notice of sale to be sent register of state lands. A copy of the notice of sale of any kind of the bonds covered by this act shall be forwarded to the register of state lands of the state of Montana in ample time before the date of sale.

History: En. Sec. 5, Ch. 38, L. 1923.

5668.6. Governor to designate fiscal agencies for bonds. The governor of the state of Montana is hereby authorized to designate one or more banks or trust companies in each city in the United States where the bonds or interest coupons of any bonds issued by the state of Montana or any county, city, town, school district, irrigation district or drainage district of Montana, are made payable, as the fiscal agency for the state of Montana for the payment of such bonds and coupons.

History: En. Sec. 1, Ch. 92, L. 1925.

5668.7. Bond required of fiscal agencies. Before establishing and designating such fiscal agency, the governor shall, if he deem it necessary, require a bond to be given by such bank or trust company to the state of Montana, in such amount as the governor may prescribe, approve and deem

sufficient to insure the safety and prompt payment of all funds deposited with such fiscal agent. Such bond shall be approved by the governor and filed in his office.

History: En. Sec. 2, Ch. 92, L. 1925.

5668.8. Redemption money may be deposited with fiscal agencies. From and after the passage of this act, the treasurer of the state of Montana or the treasurer of any county, city, town, school district, irrigation district, or drainage district of Montana may be required to remit to the state fiscal agency, at least fifteen (15) days or such other period as may be agreed upon, before the maturity of any bonds or coupons payable as provided in section 5668.6, a sufficient sum of money to cover the redemption of such bonds or coupons.

History: En. Sec. 3, Ch. 92, L. 1925.

5668.9. Cancellation of bonds and coupons on receipt of redemption moneys by fiscal agencies. On the receipt of any funds by such fiscal agent, it shall be the duty of such fiscal agent to notify the officers from whom received of the receipt thereof, and immediately upon the payment of the bonds or coupons for which such funds were remitted, said bonds or coupons shall be cancelled and shall be returned to the treasurer of the state, county, city, town, school district, irrigation district, or drainage district entitled to the same.

History: En. Sec. 4, Ch. 92, L. 1925.

5668.10. Auditor to be notified by bonding districts of fiscal agents—auditor to advise governor—notice of place of payment. It shall be the duty of the treasurer of the state of Montana, or any county, city, town, school district, irrigation district, or drainage district of Montana, which has issued bonds, to advise the state auditor forthwith, giving the name and location of all banks or trust companies at which said bonds or interest coupons are made payable, whereupon the state auditor shall so advise the governor in order that the necessary fiscal agency may be designated.

It shall be the duty of the state auditor, immediately after the establishment of any fiscal agency provided for in this act, to publish a notice in some newspaper of general circulation in any city where such bonds are made payable, for two weeks, and thereafter all bonds and coupons of the state of Montana, or any county, city, town, school district, irrigation district or drainage district of Montana, which are by their terms payable at a certain bank in said city, shall be paid at said fiscal agency.

History: En. Sec. 5, Ch. 92, L. 1925.

5668.11. Bonding district not responsible for funds remitted to fiscal agents. No state, county, city, town, school district, irrigation district or drainage district treasurer shall be held responsible for funds remitted to any fiscal agency in pursuance of the provisions of this act, after the acknowledgment of the receipt of the same by the fiscal agent.

History: En. Sec. 6, Ch. 92, L. 1925.

5668.12. Liability of treasurer neglecting to perform duty under act. In case any state, county, city, town, school district, irrigation district, or drainage district treasurer shall wilfully neglect or refuse to perform the

duties imposed by this act, he shall be liable to the holder of any bonds or coupons aggrieved thereby, in a sum double the amount of such bonds or coupons as shall be dishonored by the neglect or refusal of such officer to comply with the provisions of this act, provided the state or the municipality shall have funds on hand to pay such obligation herein mentioned which may be recovered in a suit at law against such treasurer.

History: En. Sec. 7, Ch. 92, L. 1925.

5668.13. Change of fiscal agency by governor—notice. The governor of the state may at any time change any fiscal agency in case the agency theretofore designated shall neglect or refuse to act, and in case of a change being made, it shall be the duty of the state auditor to notify the state treasurer and all county, city, town, school district, irrigation district, and drainage district treasurers within the state of Montana, of such change, and shall publish the same as provided in section 5668.10.

History: En. Sec. 8, Ch. 92, L. 1925.

CHAPTER 417

ADMINISTRATION OF INDIAN WELFARE FUNDS

Section 5668.14. State departments and bureaus authorized to administer federal funds for welfare of Indians.

5668.15. Board of health—board of education—bureau of child and animal protection—administration of federal funds for Indians.

5668.16. Budgets—accounting to federal disbursing and auditing officers—duty of state departments and bureaus.

5668.14. State departments and bureaus authorized to administer federal funds for welfare of Indians. If and whenever the congress of the United States shall authorize the administration of federal appropriations for the welfare of the Indians of Montana through the agency of public departments and bureaus of this state, full power and authority is conferred upon such state agencies to administer the expenditure of such federal appropriations for the welfare of such Indians within the scope of the powers conferred upon such departments by law.

History: En. Sec. 1, Ch. 65, L. 1927.

5668.15. Board of health—board of education—bureau of child and animal protection—administration of federal funds for Indians. In furtherance of this authorization, the state board of health is hereby authorized, empowered and directed to administer the expenditure of all such federal appropriations as may be made for the care and hospitalization of and for medical attention to sick or injured Indians, and for the control and prevention of communicable and infectious diseases, and general sanitation among the Indians of Montana. The state board of education is authorized, empowered and directed to administer the expenditure of such federal appropriations as may be made for the construction and maintenance of schools and the education of the Montana Indians. The state bureau of child and animal protection is authorized, empowered and directed to administer the expenditure of such federal appropriations as may be made for the relief of aged, infirm, and indigent Indians throughout the state of Montana. Subject to such limitations as the congress of the United States or the secre-

tary of the interior may lawfully impose upon the administration of such funds, the several state departments above mentioned are authorized to expend the same for the purposes within their respective jurisdictions which in the opinion of the respective heads of said departments will best conserve the interests and welfare of all the Indians residing within the state of Montana.

History: En. Sec. 2, Ch. 65, L. 1927.

5668.16. Budgets—accounting to federal disbursing and auditing officers—duty of state departments and bureaus. If the congress of the United States shall require the submission of budgets to the secretary of the interior or any other federal agency before authorizing the expenditure of federal funds, such state agencies are hereby authorized to prepare budgets showing the amounts necessary during each year to carry out the purposes for which such federal appropriations may be made, and shall submit such budgets when prepared to the state board of control who shall coordinate the same so far as possible and approve them before they are forwarded to the federal agency charged with receiving them by congress. Thereafter said state agencies shall account directly to the federal disbursing and auditing officers and employees of each of said departments shall be responsible upon their official bonds to such federal disbursing and auditing officers for a proper accounting for all funds so disbursed.

History: En. Sec. 3, Ch. 65, L. 1927.

CHAPTER 418

GIFTS TO PUBLIC BODIES AND INSTITUTIONS AUTHORIZED

Section 5668.17. Public bodies' and institutions' authority to receive property by gifts.
5668.18. Applicable provisions.

5668.17. Public bodies' and institutions' authority to receive property by gifts. All counties, all school districts, and all public libraries, hospitals, cemeteries and other public institutions are hereby granted the power and authority to accept, receive, take, hold and possess any gift, donation, grant, devise or bequest of property, real or personal and the right to own, hold, work and improve the same.

History: En. Sec. 1, Ch. 47, L. 1927.

5668.18. Applicable provisions. The provisions of sections 5043 and 5044, are hereby made expressly applicable to gifts, donations, grants, devises and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in the preceding section of this act.

History: En. Sec. 2, Ch. 47, L. 1927.

CHAPTER 419

UNIFIED INVESTMENT PLAN FOR PUBLIC FUNDS UNDER JURISDICTION OF STATE.

Section 5668.19. Unified investment plan for investment of Montana trust and legacy fund.
5668.20. Funds to be invested according to unified plan.
5668.21. Departments may request investment of funds according to unified investment plan.

- 5668.22. Transfer of investments of permanent funds.
- 5668.23. Transfer of investments of department funds.
- 5668.24. Investment of funds—supreme court supervision—duty of land commissioners.
- 5668.25. Sale and transfer of securities—power of land board concerning.
- 5668.26. Treasurer's account of funds—auditor's account.
- 5668.27. Compensation of state for administering funds.
- 5668.28. Transfer of accrued interest.
- 5668.29. Annual transfer of interest collected.
- 5668.30. Payments from Montana trust and legacy fund.
- 5668.31. Payments made on order of board—annual statement of treasurer.
- 5668.32. Limitation of payments from funds.
- 5668.33. Records of treasurer—publicity to contributors given by legislature.
- 5668.34. Reports of state treasurer concerning funds.

5668.19. Unified investment plan for investment of Montana trust and legacy fund. This section shall be regarded as a general explanation of the main features of the act. The term Unified Investment Plan as used in this act shall denote the investment and administration by the state board of land commissioners of the various funds which it is authorized to invest and administer under the provisions of this act, and under the provisions of article XXI of the constitution of the state, as one common fund to be known and designated as the Montana Trust and Legacy Fund, as hereinafter in this act more specifically provided. Under this plan all securities purchased and all cash on hand will belong jointly to the funds invested; they will share the interest collected on the same basis, and losses if any will automatically distribute themselves pro-rata over all the funds; but each fund will maintain its separate existence; all receipts for each fund including its share of the interest collected will be added to that fund, and every payment made will be deducted from the proper fund.

History: En. Sec. 1, Ch. 70, L. 1929.

5668.20. Funds to be invested according to unified plan. The state board of land commissioners is hereby authorized and required to invest according to this plan under the provisions of this act the following funds: The escheated estates fund, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long-term investment not legally in the custody of any lawfully constituted board. No fund arising mainly from federal land grants made to the state of Montana shall be invested or administered under this plan.

History: En. Sec. 2, Ch. 70, L. 1929.

5668.21. Departments may request investment of funds according to unified investment plan. Any department of the government of the state of Montana, state board, commission, bureau, institution, office or officer, which has under its or his administration any fund subject to investment,

is hereby granted the right, upon making request therefor, to have such fund or any part thereof invested by the state board of land commissioners according to this plan under the provisions of this act. The said board is hereby authorized and required to invest and administer the fund or part of fund for which such request has been made.

History: En. Sec. 3, Ch. 70, L. 1929.

5668.22. Transfer of investments of permanent funds. Investments belonging to the funds designated in section 5668.20 shall be transferred to the account of the Montana trust and legacy fund as of July 1, 1929.

History: En. Sec. 4, Ch. 70, L. 1929.

5668.23. Transfer of investments of department funds. Investments belonging to any of the funds embraced under the provisions of section 5668.21 of which the state board of land commissioners has assumed the investment administration, shall be transferred to the account of the Montana trust and legacy fund upon request for such transfer made by the officer or authority having charge of such fund, if in the judgment of the board such securities in every way constitute safe and satisfactory investments for the Montana trust and legacy fund.

History: En. Sec. 5, Ch. 70, L. 1929.

5668.24. Investment of funds—supreme court supervision—duty of land commissioners. All funds invested according to the unified investment plan shall be invested as one common fund to be known and designated as the Montana trust and legacy fund as provided in article XXI of the constitution, and shall be invested in the same kinds of securities as the constitution and the statutes prescribe for the investment of the other funds under the administration of the state board of land commissioners, and also subject to the special limitations of the said article XXI. The entire investment administration of all these funds shall be subject to the supervision of the justices of the supreme court as provided in section 17 of the said article. The commissioner of state lands and investments shall perform the same duties and exercise the same powers with regard to the investment administration of the funds under the unified investment plan as he performs with regard to the other investments made by the state board of land commissioners.

History: En. Sec. 6, Ch. 70, L. 1929.

5668.25. Sale and transfer of securities—power of land board concerning. The state board of land commissioners is hereby specifically granted the power and authority to sell and transfer at their full and true value any securities belonging to the Montana trust and legacy fund to any other fund under its control or to investors, when it finds such sale and transfer necessary to raise money for payments due from the said fund.

History: En. Sec. 7, Ch. 70, L. 1929.

5668.26. Treasurer's account of funds—auditor's account. The state treasurer shall keep a separate account to be designated by name and number for each and every fund which is invested and administered as part of the Montana trust and legacy fund and shall also keep an account of the total of such fund and of all the investments belonging to such fund. Every

receipt and collection for each and every fund shall when received be added to the particular fund to which it belongs, and every payment made shall be deducted from the proper fund. The state auditor shall in all cases keep accounts corresponding to those required to be kept by the state treasurer under the provisions of this act.

History: En. Sec. 8, Ch. 70, L. 1929.

5668.27. Compensation of state for administering funds. The state shall be entitled to receive as compensation for the administration of all the funds administered under this act one-twentieth ($1/20$) of all the interest collected thereon each year, less the losses, if any, ascertained during the same year. (See section 11 of article XXI, constitution).

History: En. Sec. 9, Ch. 70, L. 1929.

5668.28. Transfer of accrued interest. On December 31, 1929, the state treasurer shall transfer from the total interest receipts for the Montana trust and legacy fund up to that date all interest accrued but unpaid on July 1, 1929, on all securities taken over by the state board of land commissioners, and add such accrued interest to the individual funds to which it belongs. From the balance of the interest collected up to December 31, the state treasurer shall transfer to the state general fund one-twentieth ($1/20$) less all the losses, if any, on the investments ascertained up to that time.

The balance of the interest collected shall be added pro-rata to each and every fund constituting the Montana trust and legacy fund, which was part of that fund on July 1, 1929, and still remains a part thereof, based on the total thereof on that date, and shall be added to each such fund, or held available for payment, according to the provisions of the statutes and other valid provisions applicable thereto.

History: En. Sec. 10, Ch. 70, L. 1929.

5668.29. Annual transfer of interest collected. On the last day of December, 1930, and on the last day of December each year thereafter, the state treasurer shall transfer to the state general fund one-twentieth ($1/20$) of all the interest collected during that year, less all the losses ascertained during that year, if any, which losses shall be deducted from the one-twentieth ($1/20$) constituting the compensation of the state. The balance of the interest collected shall be credited pro-rata to each and every fund then constituting the Montana trust and legacy fund that was in the keeping of the state on January 1, of that year, based on the total thereof on that date, and shall be added to each such fund, or held available for payment, according to the provisions of section 11 of article XXI of the constitution and of the statutes and other valid provisions applicable thereto. If any fund is larger or smaller on December 31, than on January 1 of the same year, then the average of the amounts on these two dates shall be the basis for calculating the interest to be credited to that fund.

History: En. Sec. 11, Ch. 70, L. 1929.

5668.30. Payments from Montana trust and legacy fund. The principal, and any part thereof, of each and every fund constituting the Montana trust and legacy fund shall be subject to payment at any time when due

under the constitutional and statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises. Both payments of interest earnings and payments of principal shall be made upon warrants duly issued by the state auditor under orders received by him from the authorities having the legal control of the use of the various funds.

History: En. Sec. 12, Ch. 70, L. 1929.

5668.31. Payments made on order of board—annual statement of treasurer. Whenever any payment is required to be made of interest or principal from any endowment fund or other fund administered as part of the Montana trust and legacy fund, which payment is not subject to the order of any department of the government of the state, state board, commission, bureau, institution, office or officer, other than the state board of land commissioners, the state treasurer shall send a statement in duplicate to such board of the payment or payments to be made showing all essential facts relating thereto. The board shall then issue orders upon the state auditor to issue warrants for all payments approved by it.

During January of each year, the state treasurer shall submit to the board a statement covering all such interest payments to be made for the preceding year and all such payments from principal to be made at that time giving all necessary information relating thereto. The board shall then issue orders upon the state auditor to issue warrants for all payments approved by it.

History: En. Sec. 13, Ch. 70, L. 1929.

5668.32. Limitation on payments from funds. No order or warrant shall ever be issued upon the Montana trust and legacy fund for a larger amount than the sum total of the particular fund to which it applies, and if such order or warrant is issued, the state treasurer shall refuse to pay the same and shall be personally liable under his official bond for the entire overdraft resulting from such payment if made.

History: En. Sec. 14, Ch. 70, L. 1929.

5668.33. Records of treasurer—publicity to contributors given by legislature. The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state board of land commissioners under article XXI of the constitution and acts and parts of acts carrying this part of the constitution into effect. This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislative assembly shall from time to time make provisions for suitable publicity concerning these benefactors of their fellowmen.

History: En. Sec. 15, Ch. 70, L. 1929.

5668.34. Reports of state treasurer concerning funds. The state treasurer shall from time to time make such reports relating to the affairs of the

Montana trust and legacy fund as the state board of land commissioners may call for.

History: En. Sec. 16, Ch. 70, L. 1929.

CHAPTER 420

ESTABLISHMENT OF AIRPORTS BY COUNTIES, CITIES OR TOWNS

- Section 5668.35. Airports—powers of counties, cities and towns to construct, equip and maintain.
5668.36. Lands acquired for airports declared to be for public use—eminent domain.
5668.37. Board may be created to govern airports—powers—rules and regulations.
5668.38. Tax levy for establishing and maintaining airports—bonds.
5668.39. Validation of previous action.
5668.40. Construction of act.

5668.35. Airports—powers of counties, cities and towns to construct, equip and maintain. Counties, cities or towns in this state are hereby authorized to acquire by gift, deed, purchase or condemnation and to establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports or landing fields for the use of airplanes and other aircraft, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be acquired, owned or controlled by such county, city or town.

History: En. Sec. 1, Ch. 108, L. 1929.

5668.36. Lands acquired for airports declared to be for public use—eminent domain. Any lands acquired, owned, controlled or occupied by any county, city or town for the purposes enumerated in section 5668.35, shall and are hereby declared to be acquired, owned, controlled and occupied for a public use, and as a matter of public necessity, and such counties, cities or towns shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public use or necessity.

History: En. Sec. 2, Ch. 108, L. 1929.

5668.37. Board may be created to govern airports—powers—rules and regulations. The county, city or town which has established an airport or landing field and acquired property for such purpose may construct, improve, equip, maintain, and operate the same, and for such purpose may create a board or body from the inhabitants of such county, city or town for the purpose of conferring upon them and may confer upon them the jurisdiction for the improvement, equipment, maintenance and operation of such airport or landing field. The board of county commissioners or city council, as the case may be, of any county, city or town may adopt rules and establish fees or charges for the use of such airport or landing field, or may authorize such board or body having jurisdiction to adopt such rules and establish such fees or charges subject, however, to the approval of the board of county commissioners or city council, as the case may be, of any county, city or town before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance and operation shall be a charge against such county, city or town.

History: En. Sec. 3, Ch. 108, L. 1929.

5668.38. Tax levy for establishing and maintaining airports—bonds.

For the purpose of establishing, or maintaining, or operating airports or landing fields under the provisions of this act the county commissioners or the city or town council, may each year assess and levy in addition to the annual levy for general administrative purposes a tax levy of not to exceed one mill on the dollar of the assessed value of the taxable property of said county, city or town, provided that if such levy be insufficient for the purpose of acquiring, establishing and equipping such airports or landing fields the county, city or town is hereby authorized and empowered to contract an indebtedness on behalf of said county, city or town upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to a vote of the taxpayers affected thereby in the county, city or town, and a majority vote be cast therefor.

History: En. Sec. 4, Ch. 108, L. 1929.

5668.39. Validation of previous action. All levies and expenditures heretofore made and engagements entered into by counties, cities or towns for the purposes now contemplated by this act, and all elections held in counties, cities or towns for the purpose of creating indebtedness for acquiring, equipping, maintaining and operating the airports or landing fields wherein a majority of the vote cast at such an election was in favor of such indebtedness are hereby validated and declared to be legally created, entered into and made, and all evidence of such indebtedness are declared to be legal obligation of the county, city or town wherein a majority vote has been cast in favor of such indebtedness.

History: En. Sec. 5, Ch. 108, L. 1929.

5668.40. Construction of act. Nothing in this act shall be construed as repealing section 5039.83.

History: En. Sec. 6, Ch. 108, L. 1929.

CHAPTER 421

PUBLIC WORKS CONTRACTORS' BOND

- Section 5668.41. Contractors performing public work to furnish bond—conditions.
5668.42. Notice to contractor of furnishing provender, material or supplies required.
5668.43. Liability of officers for failure to require bond.
5668.44. Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds.

5668.41. Contractors performing public work to furnish bond—conditions. Whenever any board, council, commission, trustees or body acting for the state, or any county, municipality or any public body, shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town or district, such board, council, commission, trustees or body shall require the corporation, person or persons with whom such contract is made, to make, execute and deliver to such board, council, commission, trustees or body, a good and sufficient bond with two or more sureties, or with a surety company as surety, conditioned that such corporation, person or persons shall faithfully perform all of the provisions of such contract, and pay all laborers, mechanics, sub-

contractors and material men, and all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work, a copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made, or if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof; and any corporation, person or persons performing such services, or furnishing such provender, provisions, supplies, or material to any sub-contractor shall have the same right under the provisions of such bond as if such work, services, provender, provisions, supplies or material, was furnished to the original contractor; provided, however, that the provisions of this act shall not apply to any money loaned or advanced to any such contractor, sub-contractor or other person in the performance of any such work.

History: En. Sec. 1, Ch. 20, L. 1931.

5668.42. Notice to contractor of furnishing provender, material or supplies required. Every person, firm or corporation furnishing provender, provisions, materials or supplies to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall not later than seven (7) days after the date of the first delivery of such provender, material, supplies or provisions to any sub-contractor or agent of any person, firm or corporation having a sub-contract for the construction, performance, carrying on, prosecution or doing of such work, deliver or send by registered mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver provender, provisions, materials or supplies for use thereon, with the name of the sub-contractor or agent ordering or to whom the same is furnished, and that such contractor and his bond will be held for the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such provender, provisions, material or supplies, or any part thereof, unless the provisions of this act have been complied with.

History: En. Sec. 2, Ch. 20, L. 1931.

5668.43. Liability of officers for failure to require bond. If any board, council, commission, trustee or body acting for the state, or any board of county commissioners or any mayor and common council of any incorporated city or town, or tribunal transacting the business of any such municipal corporation, shall fail to take such bond as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in section 5668.41 to the full extent and for the full amount of all of such debts so contracted by any such sub-contractor as well as such contractor.

History: En. Sec. 3, Ch. 20, L. 1931.

5668.44. Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds. The bond mentioned in section 5668.41 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Montana,

except in cases of cities and towns, in which case such municipality may by general ordinance, fix and determine the amount of such bond, and to whom such bond shall run; provided, that the same shall not be for a less amount than twenty-five per centum (25%) of the contract price of any such improvement, and may designate that the same shall be payable to such city or town and not to the state of Montana. All such persons mentioned in said section 5668.41 shall have a right of action in his or her or their own name or names, on any bond furnished under the terms of this act for work done by such laborers or mechanics and for provender, materials, supplies, provisions or goods supplied and furnished in the prosecution of such work or the making of such improvements; provided, that such persons shall not have any right of action on such bond for any sum whatever, unless within fifteen (15) days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body, city, town or district, the laborer, mechanic or sub-contractor, or materialman or person claiming to have supplied provender, materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality or other public body, city, town or district, a notice in writing in substance as follows:

"TO (here insert the name of the state, county or municipality or other public body, city, town or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or sub-contractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of Dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed)"

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the prevailing party shall be entitled to recover in addition to all other costs, attorneys' fees in such sum as the court shall adjudge reasonable; provided, however, that no attorneys' fees shall be allowed in any suit or action brought or instituted before the expiration of fifteen (15) days following the date of filing of the notice hereinbefore mentioned; and provided further, that any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

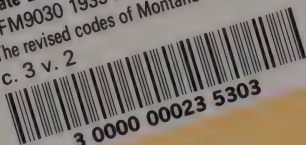
History: En. Sec. 4, Ch. 20, L. 1931.

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CHAPTER 232, CHILD WELFARE DIVISION OF STATE BOARD HEALTH—MONTANA ORTHOPEDIC COMMISSION

2511-2514. [Repealed Sec. III, Pt. VII, Ch. 82, L. 1937.]

CHAPTER 232-A, MONTANA STATE COMMISSION FOR THE BLIND

2514.1. Creation of a commission for the blind. There is hereby created a state department for the blind, to be known as the Montana state commission for the blind, hereinafter referred to as the commission, which shall be charged with the duty of promoting the welfare of blind persons by the rehabilitation and vocational training of the adult blind, in the manner hereinafter set forth. [En. Sec. 1, Ch. 42, L. 1939.]

2514.2. Appointment of a commission—compensation. The commission for the blind shall consist of five members, of which three shall be, ex-officio, the president of the Montana school for the deaf and blind; the state supervisor of rehabilitation; the administrator of the state department of public welfare, respectively; and the terms of office of the ex-officio members shall be coincident with their tenures of the aforesaid positions. The chairman of the commission shall be the president of the Montana school for the deaf and blind.

The remaining members of the commission, of whom one at least shall by preference be a blind person, shall be appointed by the governor within thirty days after the passage of this act. The full term of office of the appointed members of the commission shall be three years; but of the first commission appointed one member shall be appointed for a term of two years, one for a term of one year. At the expiration of the term of any member of the commission his successor shall be appointed for a term of three years. Any appointed member may be reappointed to succeed himself.

The members of the commission shall receive no compensation for their services, but shall be reimbursed for their traveling and other necessary expenses incurred in the performance of their official duties. [En. Sec. 2, Ch. 42, L. 1939.]

2514.3. Cooperation with federal government and state agencies. The commission is hereby designated the agency of the state of Montana, to cooperate with the federal government in the administration of the Randolph-Shepherd act approved June 20th, 1936, and in the administration of any other federal acts, and shall cooperate with any departments of the state of Montana, having for their purposes the improving of the condition of the blind of the state of Montana by rehabilitation and vocational training, and said commission is empowered and authorized to apply to such federal and state departments for, and to receive from them, any benefits to which said commission may be entitled. [En. Sec. 3, Ch. 42, L. 1939.]

2514.4. Location of commission office—officers—meetings. Subject to the approval of the state board of education, the commission may have its office at the Montana school for the deaf and blind, and shall within thirty days after its creation, meet and appoint a secretary, and a treasurer who shall be bonded and shall adopt all necessary rules and regulations to gov-

ern itself by, and shall proceed to carry out the purposes for which it is created. The commission shall meet not less than four times each calendar year at regular intervals which shall be determined at the first meeting. [En. Sec. 4, Ch. 42, L. 1939.]

2514.5. Employees of the commission—vocational training. The commission shall appoint a state supervisor for the blind, and such other officers as may be necessary and fix their compensation within the limits of the annual appropriation, in all cases giving preference to blind persons of equal efficiency, but no person employed by the commission shall be a member thereof. The state supervisor of the blind may establish under the supervision, and at the direction, of the commission one or more training schools and workshops for the training and employment of suitable blind persons, and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof. The commission may also pay for tuition, lodging, support, and all necessary expenses for blind persons during their training or instruction, whenever in the judgment of the commission such training or instruction will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had in this state, they may be arranged for, at the discretion of the commission, outside of the state. The commission may also aid individual blind persons or groups of blind persons to become wholly or partially self-supporting, by loaning or renting materials or machinery to them necessary to carry on their work, and may also assist them in the sale and distribution of their products; but this shall not be deemed to authorize the making of gifts by the commission. [En. Sec. 5, Ch. 42, L. 1939.]

2514.6. Duties of the commission. It shall be the duty of the commission through its employees to maintain a complete register of the blind in the state of Montana, which shall describe the condition, cause of blindness, capacity for education, and industrial training of each, with such other facts as may seem to the commission to be of value.

The commission shall cause to be maintained by the state supervisor of the blind, one or more departments of vocational aid, the object of which shall be to aid the blind in finding employment, and to teach them trades and occupations which may be followed in their homes or elsewhere, and to assist them in disposing of the products of their home industries. [En. Sec. 6, Ch. 42, L. 1939.]

2514.7. Definition of blindness. For the purpose of this act the term of "blind person" means a person having not more than ten percentum visual acuity in the better eye with correction. Such blindness shall be certified by a duly licensed ophthalmologist. [En. Sec. 7, Ch. 42, L. 1939.]

2514.8. Cooperation of the Montana school for deaf and blind. Upon the recommendation of the president and the local executive board of the Montana school for the deaf and blind and approval of the state board of education such facilities as may be available at the Montana school for the deaf and blind in carrying out the purposes of this act may be used by the commission. The commission shall compensate the school for the deaf and blind for any services rendered and expenses incurred in its behalf at the actual cost thereof, subject to the approval of the state board of educa-

tion. All such activities shall conform to rules and regulations determined by the local executive board of the school. [En. Sec. 8, Ch. 42, L. 1939.]

2514.9. Accounts—use of money from products sold—audit. The commission shall keep separate books of account for its industries and may use all moneys received from sale of any products made at its workshops or from the sale of the products made under supervision to which it has title, for the purpose of carrying on its industries. The state bank examiner of Montana, or some person authorized by him, shall at least once each year and oftener if he deems it advisable, examine the books, accounts and vouchers of the commission. [En. Sec. 9, Ch. 42, L. 1939.]

2514.10. Commission may receive gifts. The commission shall have authority to receive any donations, grants, or gifts of property, real or personal, from any source whatsoever, provided said donations, grants, or gifts shall be for the carrying out of the purposes of this act. [En. Sec. 10, Ch. 42, L. 1939.]

2514.11. Purpose of act. It is hereby declared that it is the purpose of this act to establish an adequate state system for the rehabilitation and vocational training of the adult blind of the state of Montana under the direct supervision of the commission of the blind to take advantage of any federal or state aid granted for the rehabilitation and vocational training of the blind. [En. Sec. 11, Ch. 42, L. 1939.]

CHAPTER 236-A, DIVISION OF INDUSTRIAL HYGIENE

2577.1. Creation of industrial hygiene division. There is hereby created and established within the state board of health of the state of Montana a division of industrial hygiene. The members of the state board of health shall be ex-officio members of such division, and the secretary of the state board of health shall be ex-officio secretary of said division. [En. Sec. 1, Ch. 127, L. 1939.]

2577.2. Powers of division. The division of industrial hygiene shall have the following powers:

- (1) To make studies of industrial hygiene and occupational disease problems in the industries of Montana;
- (2) To keep and maintain complete records of its studies, recommendations and other activities;
- (3) To make investigations of the sanitary conditions under which the men and women work in the various industries of the state;
- (4) To make and enforce regulations for the correction of unsanitary conditions found;
- (5) To report to the industries concerned the findings of such investigations and to work with such industries to remedy unsanitary conditions;
- (6) To employ such help as may be necessary to make the investigations and enforce the regulations and as is justified by the appropriation. [En. Sec. 2, Ch. 127, L. 1939.]

2577.3. Blanks for reporting occupational diseases to be furnished. The secretary of the division of industrial hygiene is hereby authorized and directed to design and provide suitable blanks for reporting occupational diseases and prepare instructions for their use, and to furnish them free of charge to all registered physicians, medical clinics, hospitals, industrial

plants and labor unions who may request them. [En. Sec. 3, Ch. 127, L. 1939.]

2577.4. Investigation of cases or deaths of occupational disease. Whenever the secretary of the division of industrial hygiene receives a report that there is within the state of Montana a case of occupational disease, or a death caused by occupational disease, he may cause an investigation to be made to determine the authenticity of the report and the cause of the disease. [En. Sec. 4, Ch. 127, L. 1939.]

2577.5. Statistics concerning occupational diseases—prevention. Once each year and at such other times as is deemed proper, the division of industrial hygiene shall compile statistical summaries of all occupational diseases reported, together with the type of employment leading to the occurrence of such diseases and shall disseminate to all employers of this state instructions and information deemed proper and expedient to prevent the occurrence or recurrence of occupational diseases. [En. Sec. 5, Ch. 127, L. 1939.]

2577.6. Occupational diseases defined. An occupational disease, for the purpose of this statute, is an illness of the body which has the following characteristics:

- (1) It arises out of and in the course of the patient's occupation.
- (2) It is caused by a frequently repeated or a continuous exposure to a substance or to a specific industrial practice which is hazardous and which has continued over an extended period of time.
- (3) It presents symptoms characteristic of an occupational disease which is known to have resulted in other cases from the same type of specific exposure.
- (4) It is not the result of ordinary wear and tear of industrial occupation or the general effect of employment or the kind of illness that results from contacts or activities in life outside of the patient's occupational pursuits. [En. Sec. 6, Ch. 127, L. 1939.]

2577.7. Duty to report cases—reports not to be made public. From and after the passage and approval of this act, every physician, hospital or clinic superintendent, and the state coal and quartz mine inspectors, having knowledge of a case of occupational disease shall, upon request of the secretary of the division of industrial hygiene of the state of Montana, and within ten (10) days after such request, report the same to the division of industrial hygiene of the state of Montana on a form provided by said division, giving the name and address of the patient, the name and business address of the employer or employers, the business of the employer, the place of the patient's employment, the length of time of his employment in the place where he took ill, the nature of the disease, and any other information required by the division of industrial hygiene. All such reports and all records and data of the division of industrial hygiene of the state of Montana pertaining to such diseases are hereby declared not to be public records or open to public inspection, and shall not be admissible as evidence in any action at law or in any hearing under the workmen's compensation act of the state of Montana. [En. Sec. 7, Ch. 127, L. 1939.]

2577.8.—Penalty for not making or for falsifying reports. Any physician, surgeon, hospital or clinic superintendent in charge of a hospital or of

clinic records, or any other person required to make such report hereunder, who shall fail to make any report required under the provisions of this act, or who shall wilfully make any false statement in such report, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00). [En. Sec. 8, Ch. 127, L. 1939.]

CHAPTER 237-A, STATE BOARD OF FOOD DISTRIBUTORS

2599.1. Terms defined. As used in this act—

(a) The term "food store" shall mean a grocery store, restaurant, pool hall, hotel, or other established place regularly licensed by the state board of food distributors, in which food or drinks are compounded, dispensed, vended, or sold at retail.

(b) The term "food" shall mean all substances, drinks, and preparations other than drugs, offered for sale and intended for human consumption.

(c) The term "board" or "state board of food distributors" shall mean the Montana state board of food distributors.

(d) The term "secretary" shall mean the secretary of the Montana state board of food distributors.

(e) The word "person" shall be construed to include every individual, co-partnership, corporation or association, unless the context otherwise requires.

(f) Masculine words shall include the feminine and neuter and the singular includes the plural. [En. Sec. 1, Ch. 49, L. 1939.]

2599.2. Board of food distributors. The Montana state board of food distributors shall consist of three (3) food distributors, each of whom shall have had at least five (5) consecutive years of practical experience in Montana as a food distributor immediately preceding his appointment, and shall be actively engaged in the distribution of food. [En. Sec. 2, Ch. 49, L. 1939.]

2599.3. Appointment and term of members—disqualification—removal. The members of the board shall be appointed by the governor, one in each year, each to serve for a term of three (3) years and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment for the unexpired term. Any member of the board who, during his incumbency, ceases to be actively engaged in the distribution of food in this state, shall be automatically disqualified from membership. Any member may be removed from office by the governor upon proof of malfeasance or misfeasance in office. The members of the Montana state board of food distributors heretofore appointed and now holding office shall continue until their respective terms expire. [En. Sec. 3, Ch. 49, L. 1939.]

2599.4. Recommending names for appointment. The Montana state food distributors association shall recommend five (5) names for each appointment to be made, from which list the governor shall elect. [En. Sec. 4, Ch. 49, L. 1939.]

2599.5. Officers. The board shall annually elect from its members a president, a vice-president, a treasurer, and a secretary, who may or may not be a member. [En. Sec. 5, Ch. 49, L. 1939.]

2599.6. Powers and duties of the state board of food distributors. (a) To regulate the quality of all food sold at retail in this state, using the state and federal pure food and drug acts as the standard.

(b) It may, by its duly authorized representative, enter and inspect any and all places where food is sold, vended, given away, or manufactured. It shall be unlawful for any person to refuse to permit or otherwise prevent such representative from entering such places and making such inspection.

(c) To report its proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all food stores licensed during the year and the items of the receipts and disbursements.

(d) To employ necessary assistants, and make rules for the conduct of its business.

(e) To perform such other duties and exercise such other powers as the provisions of the act may require.

(f) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act. [En. Sec. 6, Ch. 49, L. 1939.]

2599.7. Meetings of the board of food distributors. The board shall meet at least once every six months for the purpose of transacting its business. [En. Sec. 7, Ch. 49, L. 1939.]

2599.8. Per diem of members of the board. Each member of the board shall receive ten dollars per day for his actual services as such, and his necessary expenses in attending meetings. [En. Sec. 8, Ch. 49, L. 1939.]

2599.9. Secretary's compensation—bond. The secretary shall receive a salary to be fixed by the board and all expenses necessarily incurred by him in the performance of his duties. He shall give such a bond as the board may from time to time require, which bond shall be approved by the board. [En. Sec. 9, Ch. 49, L. 1939.]

2599.10. Food stores—licenses, offenses for failure to obtain. The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within this state. Upon the payment of a fee of two dollars, the board shall issue a license and provide the insignia designating such store a "certified food store" by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board. [En. Sec. 10, Ch. 49, L. 1939.]

2599.11. Registration—may suspend, revoke, or refuse to renew—entitled to hearing. The board may suspend, revoke or refuse to renew any registration or license obtained by false representation or fraud, or when the person to whom license or registration shall have been granted has been convicted for violation of any of the provisions of this act, or for a felony. Before any license can be revoked, the holder thereof shall be entitled to a hearing by the board, upon due notice of the time and place where such hearing shall be held. The accused may be represented by legal counsel,

shall be entitled to compulsory attendance of witnesses and shall have the right of appeal to the district court of the proper county on the question of law and fact. [En. Sec. 11, Ch. 49, L. 1939.]

2599.12. Quality of food sold—adulteration—who is responsible. (a) Every proprietor or manager of a food store shall be responsible for the quality of all food sold therein, except for articles sold in the original package of the manufacturer.

(b) It shall be unlawful for any person or his agent to adulterate any food, or mix any foreign or inert substance with food, for the purpose of adulteration or cheapening same.

(c) Nothing in this act shall be construed to change any of the provisions of the pure food and drug act of Montana, being chapter 237 of the Revised Codes of Montana of 1935. [En. Sec. 12, Ch. 49, L. 1939.]

2599.13. Fees to be deposited with board treasurer—payments to be made. All fees received by the state board of food distributors under this act shall be deposited with treasurer of the board. In enforcing any and all laws affecting or pertaining to food stores licensed herein, all fines paid under the provisions of this act or in connection with the enforcement of this act or any other act concerning food stores or in connection with the enforcement thereof, shall be paid to the credit of the common school fund of the state of Montana, provided that no salary or expenses of the board of food distributors shall be paid out of the state treasury. No expenses shall be incurred by said board in excess of the revenue derived from such fees. All expenditures of said board and all expenses necessarily incurred thereby in exercise of its powers or the performance of its duties under this act, shall be paid out of said fund in hands of treasurer of the board. Payments out of said fund shall be made only by warrant or order on said funds drawn by the secretary and countersigned by the president of the state board of food distributors. The treasurer shall give such bond as the board may from time to time require. [En. Sec. 13, Ch. 49, L. 1939.]

2599.14. Board to turn over certain moneys. The board shall, in each year, turn over to the Montana state food distributors association for the advancement of the science, sanitation and public health in food distribution, and for the enforcement of this or any other law relating to food stores, out of the annual fees collected by it, such sum as it may deem advisable, but not less than one dollar for each store which shall have paid its renewal fee during such year. [En. Sec. 14, Ch. 49, L. 1939.]

2599.15. Attorney general to be attorney for state board of food distributors—prosecutions—secretary to assist in enforcement—duties of county attorneys. The attorney general of the state of Montana shall be the attorney for the Montana state board of food distributors but said board may employ other counsel. The secretary of the Montana state board of food distributors shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general in the administration and enforcement of this act. It shall be the duty of the county attorney of the county wherein any offense hereunder is committed to prosecute the offender. Such prosecutor is authorized to examine the books of any manufacturer, druggist, store-keeper, or wholesale dealer within the state for

the purpose of acquiring information to aid in the prosecution. [En. Sec. 15, Ch. 49, L. 1939.]

2599.16. Posting of license required. Any person, persons, firm or corporation, which, under this act, are required to have a license, shall at all times have such license posted in a conspicuous place in their place of business and shall have the same at all times available for inspection and examination by any person or citizen of the state of Montana. [En. Sec. 16, Ch. 49, L. 1939.]

2599.17. Penalties. Any person violating any of the provisions of this act or rules and regulations hereunder, shall be guilty of a misdemeanor, unless otherwise provided. [En. Sec. 17, Ch. 49, L. 1939.]

2599.18. Title of act. The title of this act shall be the food distributors law of 1939. [En. Sec. 19, Ch. 49, L. 1939.]

CHAPTER 240, REGULATION OF PRODUCTION AND SALE OF DAIRY PRODUCTS

2620.4. Definitions of terms. For the purpose of this act, the following definitions are hereby adopted:

Butter is the clean, non-rancid product made by gathering in any manner, the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than eighty per centum of milk fat. No tolerance for any deficiency in milk fat shall be permitted. Butter may also contain added coloring matter.

Renovated butter or process butter is the product made by melting and reworking, without the addition or use of chemicals or any substances except whole milk, cream or salt, and must contain not less than eighty per centum of milk fat.

Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning, and must contain in the water free substance, not less than fifty per centum of milk fat, and not more than thirty-nine per centum of moisture. Cheese may also contain added coloring matter.

Skimmed milk cheese is the sound, solid and ripened product made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter, or any combination of any such products, with or without sweetening, clean wholesome eggs or egg products, and with or without the use of harmless flavoring and coloring. Ice cream must contain not less than ten per centum of milk fat, and not less than thirty-three per centum total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed one per centum gelatine. No frozen milk or milk product shall be manufactured or sold unless it contains at least ten per centum butterfat, excepting sherbets and ices and other exceptions shown in this same section. All ice cream must be manufactured from pasteurized ice cream mix.

Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean and mature fruit, and it must contain not less than nine per centum of milk fat.

French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits and all similar frozen products, excepting sherbets and water ices, are varieties of ice cream.

Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with all the requirements for ice cream as set forth herein.

Milk sherbet means the pure, clean, frozen product made from milk product, water and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than four per centum by weight of solids.

Ice or ice sherbet means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, and with or without harmless coloring, and must not contain less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain no milk solids.

Creamery. A creamery is a place where the milk or cream furnished by three or more persons is used for the manufacture into butter for commercial purposes.

Cheese factory. A cheese factory is a place where milk furnished by three or more persons is made into cheese for commercial purposes.

Ice cream factory. An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

Ice cream mix factory. An ice cream mix factory is any place where ice cream mix is made.

Milk or cream buying or collecting station. A milk or cream buying or collecting station is any place where milk or cream is bought or collected for shipment or delivery to a creamery or to any person intending to make use of the same for commercial purposes.

Person. The term "person" as used herein shall include all persons, whether natural or artificial, including firms, co-partnerships, corporations and marketing associations of every description.

Department. The term "department" as hereinafter used shall, unless otherwise indicated, refer to the department of agriculture, labor and industry of the state of Montana.

It shall be unlawful for any person, firm or corporation by himself, his or its servant or agent, to manufacture, sell, expose or offer for sale or exchange any butter or other substance or commodity defined in this act containing a less quantity of butterfat or other ingredient than herein required. Any such violator shall be deemed guilty of a misdemeanor and shall be punished according to the provisions of section 2620.60 of this act. [As amended Sec. 1, Ch. 68, L. 1937.]

2620.20. Location and construction of creameries, cheese factories, ice cream factories and ice cream mix factories. The location and construction

of creameries, cheese factories and ice cream mix factories shall be subject to the following regulations:

- (a) They shall not be located within 200 feet of any hog pen or corral.
- (b) The buildings and equipment of all creameries, cheese factories, ice cream factories and ice cream mix factories must be of such character that the dairy products manufactured or kept therein shall be preserved in first class, sanitary condition.
- (c) Meat or other products must not be stored in the same room or cabinet with dairy products if it can be shown that any of the dairy products kept in such room or cabinet are contaminated by the inclusion of any other product in same room or cabinet.
- (d) Creameries, cheese factories and ice cream mix factories shall be equipped with a steam boiler large enough to furnish sufficient steam and boiling water to thoroughly wash and sterilize all equipment and utensils and to thoroughly pasteurize all milk and milk products.
- (e) All ice cream factories shall have available sufficient steam or hot water to thoroughly wash and sterilize all equipment and utensils.
- (f) The floors of the part of the factories where butter, cheese or ice cream mix are manufactured and stored must be of concrete and so constructed that they can be thoroughly washed and drained.
- (g) The floors of the part of the factories where ice cream is manufactured or stored must be water-proof and of a material that can be thoroughly washed and cleaned; the walls and ceilings of such room shall be of a suitable impervious material which shall be smooth and tight, clean and cleanable; the ceiling of such room shall not be less than eight feet from floor. The ice cream freezing equipment shall be installed in such a way that it shall not be subject to undue contamination by dirt, dust, flies or handling by customers; such room shall not be used as a place of habitation or as sleeping quarters.
- (h) All butter, cheese, ice cream mix and ice cream factories must be equipped with a can washer or double compartment sink and must be connected with the sewer or pipe which will convey the waste water under ground to a point not less than fifty feet from the building.
- (i) Whenever ice cream freezing equipment is installed in a room which is a drug, confectionery or other food or drink establishment, to which the public has access, such equipment shall be installed in a sanitary manner to be approved by the commissioner of agriculture or his agents and thereafter shall be kept and maintained in a sanitary condition.
- (j) All butter, cheese, ice cream and ice cream mix factories must be well ventilated and must be provided with windows containing at least ten square feet of glass for each one hundred feet of floor space, or other approved lighting system. Between May 1st and November 1st of each year screen doors shall be provided and used on all outside doorways. During said time screens shall be provided and used on all open windows. [As amended Sec. 2, Ch. 68, L. 1937.]

2620.34. Names to appear on package. All creamery butter sold, offered or exposed for sale at retail in the state of Montana, wherever manufactured, must be wrapped in parchment paper and must have the wholesalers or manufacturers name clearly printed in a conspicuous place on the

outside of the package in which it is sold. On each pound package of butter so sold or offered for sale the words "16 ounces net weight" or "1 lb. net weight" shall appear. [As amended Sec. 3, Ch. 68, L. 1937.]

2620.39. Regulation of sale of dairy products containing extraneous fats.

References

United States v. Caroline Products Co., 304 U. S. 144, 150.

2620.49. Pasteurization defined. The process of pasteurization, as applied to milk, skim milk, cream and other milk products is hereby defined to be a process for the elimination therefrom of organisms harmful to human beings, which process consist of;

(a) Uniformly heating every particle of such milk, skim milk or cream, as the case may be, to the temperature of not less than 142 degrees Fahrenheit and of holding same at a temperature of 142 degrees Fahrenheit for a period of not less than thirty minutes or more than one hour, and immediately thereafter cooling same to a temperature of not above 50 degrees Fahrenheit providing that the cream is pasteurized to be used in the manufacture of cheese or culture milk, in such case the cooling temperature may be above that herein specified;

(b) Milk or the derivatives that are to be used in the manufacture of milk products and cream may be pasteurized by heating above 142 degrees Fahrenheit when every particle of which is uniformly heated and held at a temperature above 145 degrees Fahrenheit, the time for holding may be decreased from thirty minutes by one minute for each degree of temperature above 145 degrees Fahrenheit. If milk is repasteurized it must not be sold for market milk. [As amended Sec. 4, Ch. 68, L. 1937.]

2620.70. Regulations for sale of butter. Any product manufactured, sold, offered or exposed for sale as butter shall contain not less than 80% milk fat, no tolerance for deficiency being allowed. [En. Sec. 5, Ch. 68, L. 1937.]

2620.71. Wholesale butter and cheese dealers' license. It shall hereafter be unlawful for any person, firm or corporation, by himself, his or its servant or agent, to sell, exchange or offer for sale at wholesale or have in his or its possession with intent to sell or offer for sale or exchange at wholesale any butter or cheese without first securing a license from the department of agriculture, labor and industry of the state of Montana to conduct such sale or exchange. The fee for such license shall be \$20.00. Those creameries already having a license from said department permitting them to manufacture butter or cheese shall be exempted from this license. Whenever any person, firm or corporation by himself, his or its servant or agent, or as the agent or servant of another, conduct such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business and a separate fee shall be charged for such license. All wholesalers or jobbers handling butter or cheese shall conduct their business under the same regulations of cleanliness, sanitation and refrigeration as prescribed for dairy manufacturing plants. [En. Sec. 6, Ch. 68, L. 1937.]

2620.72. Condemnation of unfit containers of milk and cream. The commissioner of agriculture or his agents are authorized to condemn any container of milk or cream that is rusty or unfit for use for such purpose. Any container found unfit for use as a container for milk or cream shall be con-

demned and marked for identification by the commissioner of agriculture or his agents. Should the container be used for milk and cream after being so condemned, it shall be destroyed. [En. Sec. 7, Ch. 68, L. 1937.]

2634.1. Egg dealers' license—fee. Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell more than an average of 25 cases of eggs per month for any one year, other than those produced by fowls owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be two dollars (\$2.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be twenty dollars (\$20.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance. [As amended Sec. 1, Ch. 151, L. 1939.]

2634.5. Certificate of candling. Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him, which have not been candled by a licensed egg grader; and he shall refuse to buy eggs unfit for human food as defined in section 2634.6. "Rejects" shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed on the top layer of every case of eggs if candled and graded, which should state exact grade and size, also date of candling, by whom candled and license number of licensee. If not candled, or graded, the certificate should state "not candled or graded", the name of the dealer and when packed. Such certificate shall be printed on card or sheets of paper not smaller in size than $2\frac{3}{8}$ by $4\frac{1}{4}$ inches. [As amended Sec. 2, Ch. 151, L. 1939.]

2634.6. Eggs defined as unfit for human food. Eggs hereinafter defined shall be deemed unfit for human food:

- (a) "Addled", or "white rot" means an egg that is putrid or rotten.
- (b) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.
- (c) "Blood spot" is a spot of blood adhering to the yolk of an egg.
- (d) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.
- (e) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.
- (f) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.
- (g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than forty-eight (48) hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated".
- (h) "Bloody white" means an egg with a general reddish appearance due to blood mixed through it and which egg may show spots of blood floating in the white.

(i) "Meat spot" means that the egg has a speck of foreign matter adhering to the yolk or floating in the white." [As amended Sec. 3, Ch. 151, L. 1939.]

2634.7. Imported eggs—labeling "imported eggs". All eggs imported into the State of Montana from other states or foreign countries shall be sold as such. All such eggs sold in Montana must comply with the requirements of this act and must be inspected and passed by licensed Montana egg graders. The case or container in which they are shipped shall have the words "foreign eggs" or the word "eggs" preceded by the name of the country or state where produced displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs in any form must place a sign in letters not less than four (4) inches in size in some conspicuous place, where the customer entering their place of business can see it, to read "we use foreign eggs", or the same words with the exception that the name of the country or state where the eggs were produced may be substituted for the term "foreign". [As amended Sec. 4, Ch. 151, L. 1939.]

2634.8. Notice to purchaser of grade of eggs. It shall be unlawful for any person to sell, offer or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality and size or weight of such eggs, according to the standards prescribed by the commissioner of agriculture, by stamping or printing on the container of any such eggs, such grade or quality and size or weight, and in the case said eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where such eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving such grade, quality, size and weight and date of grading without placing a Montana state egg seal upon each carton, bag or other container in which eggs are sold, delivered or offered for sale at retail to the consumer. Provided, that this act shall not affect the sale of eggs by the producers when the consumer purchased said eggs at the place of production. [As amended Sec. 5, Ch. 151, L. 1939.]

2634.9. Invoice to show grade of eggs. Every person other than the producer, except persons or firms who do not sell more than 25 cases of eggs per month, in selling eggs to a retailer shall furnish to such retailer an invoice showing the exact grade or quality of such eggs according to standards prescribed by the commissioner of agriculture. [As amended Sec. 6, Ch. 151, L. 1939.]

2634.11. Penalties. Every person failing to comply with the requirements of this act or any provisions of this act shall be guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than seventy-five dollars (\$75.00). Upon conviction for the second or any subsequent violation of the foregoing provisions of the act the violator shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00). [As amended Sec. 7, Ch. 151, L. 1939.]

2634.12. Montana state egg seal. The commissioner of agriculture is hereby authorized and it shall be his duty to provide and make available a suitable gummed paper seal to be known as the Montana state egg seal; and he shall have the power from time to time to establish the price at which said seal shall be sold, but in no case shall the cost of such seal exceed one and three-quarters mills ($1\frac{3}{4}$) per dozen eggs. The proceeds from the sale of said seals shall be expended by the commissioner of agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act. [En. Sec. 8, Ch. 151, L. 1939.]

2634.13. Licensed egg graders. All wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers must employ only experienced and licensed graders. The fee for grader's license shall be one dollar (\$1.00) per year. All candlers and graders must pass an examination as required by the commissioner of agriculture. The license shall expire March 31st each year after the date of issuance. [En. Sec. 9, Ch. 151, L. 1939.]

2634.14. Revocation of license. All licenses issued by the department under this act may be revoked by the commissioner of agriculture or his agents in the state of Montana, whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license. If any firm, person or corporation whose license has been so revoked by the commissioner shall thereafter continue to buy, sell or deal in eggs without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties of this act herein provided. [En. Sec. 10, Ch. 151, L. 1939.]

2634.15. Funds from licenses and seals, use of. All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the revolving fund of the dairy division of the department of agriculture, labor and industry. [En. Sec. 11, Ch. 151, L. 1939.]

CHAPTER 241, MILK CONTROL BOARD

2630.1-2639.12. [Repealed Sec. 26, Ch. 204, L. 1939.]

2640. Regulation of dairying. [Repealed Sec. 26, Ch. 204, L. 1939.]

CHAPTER 241-A, MILK CONTROL BOARD

2640.1. Declaration of policy and purpose. It is hereby declared:

- (a) That milk is a necessary article of food for human consumption;
- (b) That the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;
- (c) That the production, transportation, processing, storage, distribution and sale of milk, in the state of Montana, is an industry affecting the public health and interest;
- (d) That unfair, unjust, destructive and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;

(e) That health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) That it is the policy of this state to promote, foster and encourage the intelligent production and orderly marketing of fluid milk and cream; to eliminate speculation and waste, and to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities;

(g) That investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk, and due to the vital importance of milk to the health and well being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing and chaotic conditions and trade practices within the industry, which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) That fluid milk is a perishable commodity, which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) That the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and insure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into by-products of milk at great expense and oftentimes at a loss to the producer and distributor;

(j) That this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the fluid milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and oftentimes to produce milk of an inferior and unsanitary quality;

(k) That investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk is affected to the detriment of, and against the best interest of the citizens of this state whose health and well-being is thereby vitally affected;

(l) That, where no supervision and regulation is provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

(m) That, due to the nature of milk and the conditions surrounding its production and distribution the natural law of supply and demand has been found inadequate to protect the industry in this and other states, and in the public interest it is necessary to provide state supervision and regulation of the fluid milk industry in this state. [En. Sec. 1, Ch. 204, L. 1939.]

2640.2. General purpose. The general purpose of this law is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the fluid milk industry. It is enacted in the exercise of the police powers of the state. [En. Sec. 2, Ch. 204, L. 1939.]

2640.3. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or association.

"Producer" means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor or producer-distributor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any city, town, or community of the state, or two or more of the same, designated by the board as a natural marketing area.

"Milk" means fluid milk and cream sold for consumption as such.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use. [En. Sec. 3, Ch. 204, L. 1939.]

2640.4. Milk control board. There is hereby constituted a milk control board to consist of the executive officer of the Montana livestock sanitary board, as chairman, who shall serve in ex-officio capacity without compensation except for necessary expenses while engaged with the duties of the board, and four members who shall be appointed by the governor with the following qualifications: One person who is a "consumer" and who is not otherwise engaged in the milk business, one person who is a "producer" selling to a distributor, one person who is a "producer-distributor", and one person who is a "distributor". The three persons appointed from the industry shall be selected from a market or markets designated and established by the board.

All terms of appointment shall be for a term of four years except the original appointments which shall be for terms of one, two, three and four years respectively as designated by the governor. Any vacancy shall be filled by appointment by the governor for the unexpired term. Three members of the board shall constitute a quorum for the regular transaction of business.

The compensation of the appointed members of the board shall be fixed at five dollars (\$5.00) per day for each day actually engaged in the official functions of the board plus subsistence and necessary traveling expenses at the rate allowed other state employees.

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power, and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act. Such person shall, before he enters upon the discharge of his duties, execute and file a bond, in such amount as may be fixed by the board, as may be provided by law for public officers. [En. Sec. 4, Ch. 204, L. 1939.]

2640.5. General powers of the milk control board. The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the fluid milk industry of the state of Montana, including the production, transportation, processing, storage, distribution and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to cooperate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture, labor and industries in enforcing the provisions of this act. The board shall have the power to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state. It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be

charged against the funds provided for the operation of the milk control board. Any duly designated agent of the board may administer oath to witnesses and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides in the same manner as is provided by law for the grand jury of a county to enforce its subpoena or summons and with the same penalty as provided therefor for the failure of any person failing or refusing to comply with such subpoena, citation or summons. The board may act as mediator or arbitrator to settle any controversy or issue pertaining to fluid milk among or between producers, distributors, producer-distributors and/or consumers.

The operation and effect of any provision of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act. [En. Sec. 5, Ch. 204, L. 1939.]

2640.6. Markets. The board shall exercise its powers only within and in relation to markets already designated and established or such markets as shall be established in accordance with the provisions of this act.

(a) All natural marketing areas heretofore designated as markets by the milk control board, operating under authority of any hitherto existing milk control law, shall remain as markets as designated and are hereby declared to be legally constituted markets for all purposes of this act. This act shall, immediately upon its passage, become effective in all markets which have heretofore been designated as such by any previously constituted milk control board and are functioning as such at the time of passage of this act, and all schedules, rules and regulations issued and promulgated by any previously existing milk control board in this state that at the time of passage of this act are of force and effect are hereby declared to be of force and effect and shall continue to be of force and effect until altered or rescinded in the manner provided by this act.

(b) The board shall have power, at its discretion, to establish a new market in any natural marketing area of the state that it may designate, provided that before a designated market shall be established, a canvass

shall be made by the board, of all producers, producer-distributors and distributors doing business within the designated market and who are licensed by the Montana livestock sanitary board and who have been, for not less than ninety days, actually engaged in any one of the above indicated branches of the fluid milk industry and in the event that such preliminary canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all said dealers licensed by the Montana livestock sanitary board are in favor of the establishment of such proposed market, the board shall proceed toward the establishment of such market but shall be restrained therefrom until such time as it shall be made evident to the board that a majority of the above-designated dealers are favorable to the establishment of such a market.

This act shall become operative with respect to a newly established market when the requirements of this act for the establishment of a new market have been complied with and when the board shall duly promulgate orders and regulations governing the same, and setting forth the date at which said orders and regulations shall go into effect.

The board shall have power, at its discretion, to disestablish a market and withdraw from functioning therein, provided that before such withdrawal and disestablishment shall take place, a canvass shall be made by the board of all producers, distributors and producer-distributors licensed under this act, and in the event that such canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all the above-designated dealers are opposed to such withdrawal and disestablishment, then the board shall proceed no further toward the proposed withdrawal and disestablishment of such market. But in the event that the board is not restrained, as above provided, the proposed disestablishment of said market shall take place immediately upon due promulgation of orders to that effect by the board. [En. Sec. 6, Ch. 204, L. 1939.]

2640.7. Orders fixing prices and handling charges. Prior to the fixing of prices in any market the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing and by any other means available or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and the purchasing power of the public.

The board after making such investigation shall fix by official order:

(a) The minimum prices to be paid by the milk dealers to producers and others for milk. The orders of the board with respect to the minimum

prices to be paid to producers and others shall apply to the locality or zone in which the milk is produced in respect to the market or markets in which milk so produced is sold, and may vary in different localities or zones or markets according to varying uses and different conditions. Each order fixing prices or handling charges may classify milk by forms, classes, grades or uses as the board may deem advisable and may specify the minimum prices therefor.

(b) The minimum wholesale or retail prices to be charged for milk in its various grades and uses handled within the state for fluid consumption and wheresoever produced when sold by milk dealers whether licensed or unlicensed, to consumer; by stores to consumers except for consumption on the premises where sold; by milk dealers to other milk dealers.

A minimum wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order fixing prices to be charged or paid for milk in any of its grades or uses, the board shall hold a public hearing on such matter in the same manner provided herein for the original fixing of prices.

The retail price to be charged for milk in quart bottles shall not be more than twice the price paid by the distributor to the producer for the same grade and butterfat content of fluid milk purchased from the producer by such distributor. The board shall make adjustment from the basic rate in prices of milk sold in less quantities than quarts and at wholesale. [En. Sec. 7, Ch. 204, L. 1939.]

2640.8. Licenses to producers, producer-distributors, and distributors. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, or distributor to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearing. [En. Sec. 8, Ch. 204, L. 1939.]

2640.9. License fees. All persons required by this act to be licensed by the board shall pay a yearly license fee computed upon the following rates:

(a) A producer-distributor doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of one dollar (\$1.00) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold.

(b) A producer, doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license

year, shall pay a license fee equal to the sum of fifty cents (\$0.50) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold.

(c) A distributor, doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of fifty cents (\$0.50) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold, excepting that which is sold to another distributor.

(d) A producer-distributor or distributor, who deals in the handling of sweet cream but sells no fluid milk shall pay a license fee of one dollar (\$1.00).

(e) Any person required by this act to be licensed who, by reason of the fact that he has not previously engaged in the business, or who, for any other reason lacks the record of a full preceding year's business upon which to compute the amount of the fee of the license to be applied for, shall submit to the board such pertinent facts, records and information as the applicant may possess and the board may require concerning the volume of the applicant's business whether past or prospective as the case may be, and it shall be the duty of the board, upon the basis of the information thus or otherwise acquired to determine what, in conformity with the rates heretofore established, is a just and equitable charge for the license so applied for, and the sum so determined by the board shall be the legal license fee said applicant shall pay for the license year, or for the remaining quarter or quarters of the license year then current.

(f) The board may, if it deems advisable, permit licensees to pay license fees in installments.

(g) However, it is specifically provided with respect to the license fees for the license year beginning January first, nineteen hundred and thirty-nine, as follows:

Where any licensee has paid in to the board under the provisions of the heretofore existing milk control law any license fee or fees or assessments the board shall credit to the said licensee and apply the sum or sums so paid upon the amounts due from said licensee in payment for license or licenses required under this act; and the board is hereby authorized to adjust and equalize upon an equitable basis, all adjustment of license assessment accounts requiring adjustment by reason of the repeal of the heretofore existing milk control law and the substitution therefor of the provisions of this act. [As amended Sec. 9, Ch. 204, L. 1939.]

2640.10. Application for licenses. An applicant for license to operate as a producer, producer-distributor, or distributor shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business and such application shall be accompanied by the license fee required to be paid. The board may classify licenses and may issue licenses to dealers to carry on a certain designated kind of business only and shall require each dealer

to obtain a license for each subdivision of the industry in which he may engage whether as producer, distributor, or producer-distributor and a separate license for each separate market in which he may do business, provided that this shall not apply to transactions among and between distributors. Application shall be duly made, within ten days after this act takes effect in any market, by all dealers engaged in business in such market.

In all markets the license year shall begin with January first of each year, but where the case applies, as in the establishment of a new market or the licensing of an applicant newly engaging in business, the license fee shall be reduced twenty-five per cent (25%) for each fully elapsed quarter of the license year prior to the issuance of said license, provided, however, that no license fee, for any period, shall be less than twenty-five per cent (25%) of the yearly total. [En. Sec. 10, Ch. 204, L. 1939.]

2640.11. Declining, suspending and revoking licenses. The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license fees or any of them shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board. [En. Sec. 11, Ch. 204, L. 1939.]

2640.12. Delinquency and penalty. Any person who fails to pay his license fee when due or within the time, if any, extended by the milk control board for the payment of such license fee, shall automatically owe a penalty of ten per cent (10%) of the delinquent portion of said yearly license fee. And in the event of a license being revoked for failure to pay a license fee as required in this act, the license shall not be reinstated except upon payment, in full, of the delinquent yearly fee or the delinquent portion thereof, as the case may be, plus a ten per cent (10%) penalty upon the delinquent amount. [En. Sec. 12, Ch. 204, L. 1939.]

2640.13. Rules and orders. The board may adopt and enforce all rules and all orders necessary to carry out the provisions of this act. Every rule or order shall be posted for public inspection in the main office of the board for thirty (30) days, and a copy filed in the office of the board, also a copy sent by registered letter to the secretary of each area, excepting an order, directed only to a person or persons named therein, which shall be served by personal delivery of a copy, or by mailing a copy, in the United States mails, with postage prepaid and properly addressed to each person to whom such order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with the provisions of the statutes of Montana. Such posting, in the main office of the board, of any rule and of any order, not required to be served as above provided, and such filing in the office of the board shall constitute due and sufficient notice to all persons affected by such a rule or order. A rule or order when duly posted and filed or

served, as provided in this act, shall have the force and effect of law. [En. Sec. 13, Ch. 204, L. 1939.]

2640.14. Rules of fair trade practices. In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate, in any established market, reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licensees under this act within that market. [En. Sec. 14, Ch. 204, L. 1939.]

2640.15. Entry, inspection and investigation. The board, or any person designated for that purpose by the board, shall have access to, and may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to such transactions are kept and shall have the power to inspect and copy the same in any place within the state, and may administer oath, and take testimony for the purpose of ascertaining facts, which, in the judgment of the board, are necessary to administer this act, but any such information so derived shall be treated as confidential by the board and shall be used by it only for the administration of this act and not for general public issue. Any member or employee of the board and any person assisting the board in the administration of this act, who shall acquire any information, while in the employ of the board, in respect to the transactions, property, files, records, or papers of the board, or who shall acquire any information, while in the employ of the board, in respect to the business or mechanical, chemical or other industrial processes belonging to or employed by any person and who shall divulge the same to any person other than members of the board or the superior of any such employee of the board, except when called upon to testify in any action or proceeding in any court, wherein the board is a party, shall be guilty of a misdemeanor. [En. Sec. 15, Ch. 204, L. 1939.]

2640.16. Reports of dealers. The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showing such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board. [En. Sec. 16, Ch. 204, L. 1939.]

2640.17. Disposition of license fees and fines. All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All moneys received by the board shall be deposited with the state treasurer and shall be placed by him in an account to be known as the milk control board fund, the state treasurer being hereby directed and authorized to keep account of said fund and pay all warrants drawn by the state auditor, pursuant to this act, out of the said fund hereby established. All

such receipts, including fines assessed for violations of this act, are hereby appropriated for the purposes of this act. [En. Sec. 17, Ch. 204, L. 1939.]

2640.18. Formation of local associations. The board shall have power and it shall be the duty of the board to promote and foster in each established market, an association organized under regulations satisfactory to the board and composed of all licensees of the board and designated as the dairymen's association of such market. It shall be the function of such association to promote the mutual interests of its members and of the dairy industry, but its specific function with relation to the board shall be to provide an instrument whereby the licensees within the market may and they shall unitedly cooperate with and be of assistance to the board in determination, assembling and presentation of facts and findings relative to the costs of production, costs of distribution, and other factors upon which price schedules shall be based, and to otherwise counsel and assist the board as opportunity may afford in carrying out and enforcing the provisions of this act.

Such associations are hereby declared to be instrumentalities of the board and as such may receive as compensation for their services and as a means to their efficiency a percentage of the license fees paid to the board from the market so organized not to exceed ten per cent (10%) of the annual total of such license fees. [En. Sec. 18, Ch. 204, L. 1939.]

2640.19. Cooperative corporations. No provision of this act shall be deemed or construed to prevent or abridge the right of a cooperative corporation or association organized under the laws of the state of Montana and engaged in marketing or making collective sales of milk produced by its members, from blending the net proceeds of all its sales in various classes and paying its producers such blended price, with such deductions therefrom and/or differentials as may be authorized under contracts between such corporation and its members, or from making collective sales of the milk of its members and/or other producers represented by or marketing through it at a blended price based upon sales thereof in the various classes and markets, or to prevent or abridge the right of any milk dealer from contracting for his milk with such cooperative association upon such basis, or to affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation, or to impair or affect any contracts which any such cooperative association has with milk dealers or others, or affect or abridge the rights and powers of any such cooperative association conferred by the laws of the state of Montana under which it is incorporated; provided, that the prices to be paid for milk marketed by or through any such corporation shall be those fixed by the order of the board. [En. Sec. 19, Ch. 204, L. 1939.]

2640.20. Hearings—fees. Each officer, other than an employee of the board, who serves any subpoena of the board, shall receive the fees legally provided for such service and each witness who appears in obedience to a subpoena, before the board or a member or its agent, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in district courts, which fees shall be audited and paid in the same manner as other expenses are audited and paid upon the presentation of proper vouchers, approved by the board.

No witnesses subpoenaed at the instance of a party other than the board, or one of its members, or its agent, shall be entitled to compensation unless the board shall certify that his or her testimony was material to the matter investigated. [En. Sec. 20, Ch. 204, L. 1939.]

2640.21. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the board is hereby vested with power, and it shall be its duty to confer and cooperate with the legally constituted authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for the foregoing purposes, the board shall have the power to conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this act. [En. Sec. 21, Ch. 204, L. 1939.]

2640.22. Violations made misdemeanors—penalties. (a) Any person, required by this act to be licensed, who shall produce, sell, distribute, or handle milk in any way, except as a consumer, without first having obtained a license, as required of him by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding six hundred dollars (\$600.00). Each day's violation of this provision shall constitute a separate offense. A violation of any provision of this act or of any lawful rule of order of the board, including a failure to answer subpoena or to testify before the board, shall be deemed a misdemeanor punishable by a fine not exceeding six hundred dollars (\$600.00), and each day during which such violation shall continue shall be deemed a separate violation.

(b) The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act, and in all civil actions for the recovery or enforcement of fines, provided for in this act, and all such actions, both criminal and civil, shall be instituted, prosecuted and tried in the district court.

(c) It shall be the duty of the county attorneys and deputy county attorneys, in their respective counties, diligently to attend all inquisitions held under the provisions of this act and diligently to prosecute all violations of the laws of the state relating to the provisions of this act. [En. Sec. 22, Ch. 204, L. 1939.]

2640.23. Constructions, exceptions and limitations. The license required by this act shall be in addition to any other license required by any statute of Montana or any municipality of the state of Montana. This act shall apply to every part of the state of Montana.

If any portion of this act is held invalid or unconstitutional such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

No provision of this act shall apply or be construed to apply to foreign or interstate commerce except insofar as the same may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this act, affect-

ing intrastate milk, shall immediately apply and the powers conferred by this act shall attach thereto. [En. Sec. 23, Ch. 204, L. 1939.]

2640.24. Additional remedies. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act or to enforce compliance with any order, rule or regulation, of the board pursuant to the provisions of this act or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, after unanimous consent of all members of the board, may apply to the district court of the district wherein the action arises, for relief by injunction, mandamus or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of the Montana milk control board and it shall not be necessary in any action to which the board is a party that such action be brought by or against the state of Montana on relation of the Montana milk control board. The board shall have the power to institute action by its own attorney or counsellor, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court, of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsellor with either in any court. [En. Sec. 24, Ch. 204, L. 1939.]

2640.25. Transfer of Assets. All assets, appurtenances and funds of the previously existing milk control board are hereby transferred to the herein created board. [En. Sec. 25, Ch. 204, L. 1939.]

CHAPTER 245, ELECTRICAL CONSTRUCTION—REGULATION— MOVING STRUCTURES WHEN INTERFERENCE WITH POLES OR WIRES NECESSARY

2711.1. Moving of structures—interference with electric wires. No person, firm or corporation moving, hauling or transporting any house, building, derrick or other structure shall cut, move, raise or in any manner interfere with an electric light or electric power wire or poles, or with telephone or telegraph wires or poles, without giving notice to the owner or agent of said wires or poles, as hereinafter provided. [As amended Sec. 1, Ch. 174, L. 1937.]

2711.4. Interference with lines. It shall be unlawful for any person, firm or corporation engaged as principal or employer in moving any house, building, derrick or other structure, as provided in the above sections, to move, touch, cut, molest or in any way interfere with any electric light, electric power, telephone or telegraph wires, or any poles bearing any such wires, except in compliance with the provisions of this act. [As amended Sec. 2, Ch. 174, L. 1937.]

2711.5. Electrical construction by rural electrification associations. That from and after the passage of this act all electrical construction conducted, and to be operated by any rural electrification association and constructed, and to be operated in pursuance of the authority of the rural electrification administration of the federal government, within the state of Montana shall

be in conformity with the rules and regulations set forth in the national electrical safety code approved by the American engineering standards committee as published by the department of commerce of the United States and any and all revisions thereof as the same may exist from time to time. [En. Sec. 1, Ch. 194, L. 1939.]

2711.6. National electrical safety code supersedes state statutes, when. That the provisions of the national electrical safety code, as designated in section 2711.5, wherever the same may be in conflict with or in any manner contravene the provisions of chapter 245 of the Revised Codes of Montana, 1935, shall be deemed and construed as superseding, amending and modifying the provisions of chapter 245 insofar as the provisions thereof conflict with the provisions of the national electrical safety code; provided that the provisions of this section shall apply only to electrical construction conducted and operated in pursuance of the authority of the rural electrification administration of the federal government. [En. Sec. 2, Ch. 194, L. 1939.]

2711.7. Violation of act of misdemeanor—penalty. Every person, firm or corporation which shall violate any provisions of this act shall be guilty of a misdemeanor. [En. Sec. 3, Ch. 194, L. 1939.]

CHAPTER 248, UNIFORM AERONAUTICS ACT

2736.7. Lawfulness of flight—landings—recovery of damages. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft of the pilot shall be liable for actual damage caused by such forced landing. [As amended Sec. 1, Ch. 109, L. 1939.]

CHAPTER 248-A, ELIMINATING OBSTRUCTIONS NEAR AIRPORTS AND LANDING FIELDS

2736.11. Necessity of eliminating obstructions near airports and landing fields. That for the purpose of insuring and securing safety from death or bodily harm and injury for aeronauts and passengers and to protect the property of those engaged in aeronautics and to encourage and promote air travel and transportation of mail, passengers, express and freight by air, it is deemed necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated or controlled or maintained by the United States, the state of Montana, any county of the state of Montana or

any municipality thereof; and to promote the public order, health and safety by providing unobstructed air space for the safe descent, landing, ascent and operation of aircraft while using or utilizing the said public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained or controlled by any of the public authorities aforesaid, regulated and restricted as hereafter set forth and provided. [En. Sec. 1, Ch. 12, L. 1939.]

2736.12. Restrictions as to height of structures. For the purposes set forth in section 2736.11 and considering among other things:

(a) Requirements and facilities necessary to secure the safe descent, landing, ascent and operation of aircraft using or utilizing the public airports and landing fields aforesaid in the state of Montana;

(b) Hazard from the obstruction of air space in the vicinity of such airports and landing fields;

(c) The relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(d) The area within which height of buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields;

(e) The height of buildings or other structures within such area, which is consistent with the safe use of such airports and landing fields; and

(f) The maintenance and use of obstruction markers and/or lights upon buildings and other structures within the said areas, as safety devices;

The height of buildings and/or other structures is hereby regulated and restricted within a distance of two (2) miles from any such public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(1) **Approach Zone:** The trapezoidal portion of the total two mile zone area, 500 feet in width at the boundary of the field or airport, and broadening to a width of 2500 feet two miles distant, the center line of which shall be a continuation of the center line of each runway at and upon such public airports and landing fields, known as the approach zone, shall have no building, or other structure, natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(2) **Turning Zone:** The remaining portion of the two mile zone area surrounding such public airports and landing fields aforesaid, lying between the approach zones aforesaid, and known as turning zones, shall have no building or other structure, natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object, to the nearest side of the airport or landing field aforesaid, and in the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from actual boundary. [En. Sec. 2, Ch. 12, L. 1939.]

2736.13. Enforcement of act. It shall be the duty and authority of every public body or governmental authority owning, operating or maintaining a public airport or landing field, to enforce the provisions of this act as pertains to areas surrounding the particular airport under the control of such body, the same to be enforced in either the court of law or of equity in the state of Montana having jurisdiction of such action, cases to be instituted in the name of the governmental body charged hereunder with the enforcement hereof, and such action may be to prevent the erection, construction or maintenance of such buildings or other structures or parts of buildings or structures, as may exceed the height limits heretofore fixed by this law, or to restrain, correct or abate any such violation, and to prevent the occupancy and use of any part of a building or structure erected in violation of this law. [En. Sec. 3, Ch. 12, L. 1939.]

2736.14. Permit to erect structures near airports or landing fields. It is hereby made the duty of every person, firm or corporation in this state, proposing to erect, establish or maintain any building or other structure, or to grow any natural object that would exceed the height limit established by law when grown, to proceed to erect, establish or maintain such structure, or plant said natural object, without first making application to the proper officer of the United States, the state of Montana, any county or any municipality (where the proposed erection or action is within two miles of a public airport or landing field as herein set forth), whichever of said bodies has control of the airport or landing field affecting the area, and obtaining from the proper authority a permit for the erection, establishment and maintenance of the structure, building or object proposed; and, no permit shall be granted unless the specifications of the building or other structure or object reveal that the total height shall not exceed the height limits fixed by law for the zone in which the same is to be established; and no permit shall be issued in violation hereof, and any erection or maintenance without a permit which is in violation hereof, shall be ineffectual in law or equity, and shall be and remain a nullity so far as this act is concerned, and the enforcement remedies hereunder. [En. Sec. 4, Ch. 12, L. 1939.]

2736.15. Provision with relation to existing structures. With respect to any building or other structure existing at the time of the passage of this act, and which does not conform to the regulations of this act in the matter of height, the governmental authority affected thereby, whether the United States, the state of Montana, the several counties, or the several municipalities, in their own right and name, to protect their own airports and landing fields, and to carry out the purposes and provisions of this act, shall have and they are hereby given the right and authority to acquire by purchase, grant, or by condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated, as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such non-conforming building or other structure or object to meet the requirements of this act as to height limitation, within the zones designated. [En. Sec. 5, Ch. 12, L. 1939.]

2736.16. Definition of terms. Certain words in this act are defined for the purposes of the act as follows, unless the contrary clearly appears from the context, viz:

(a) **Airport and landing field:** These terms apply to any area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, owned, leased, controlled, operated or maintained by the United States, the state of Montana, any county thereof, or any municipality, or any of the authorized agencies or branches thereof, within the state of Montana.

(b) **Height of buildings and structures:** The height of a building or structure for the purposes of this act is the vertical distance measured from the ground or surface level of the airport or landing field, on the side adjacent to the said building or structure to the level of the highest point of the building or structure.

(c) **Buildings or structure:** Any edifice, structure or construction of any kind, character or description, and any object of natural growth, erected, constructed, grown, located or proposed to be erected, constructed, grown or located within the area described in section 2736.12 as safety zones, including any edifice, structure, or construction or object within said restricted zones, erected, constructed, placed or located on or over land and/or water.

(d) **The established perimeter of an airport or landing field,** for the purposes of computing all distances and elevations as contemplated by this act, shall be the metes and bounds and elevations along the respective sides thereof as determined by the United States government, the state of Montana, the several counties, the several municipalities, or other public authority owning, leasing, controlling, operating or maintaining such airport or landing field, the determination and definition to be evidenced by plat showing the metes, bounds and elevations to be filed in and among the records of said public authority for official purposes, and subject to inspection and examination at all reasonable times by any interested persons. [En. Sec. 6, Ch. 12, L. 1939.]

2736.17. Act not applicable to emergency landing strips. This act shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as "emergency landing strips", which do not provide at least 1800 feet of landing area in all directions and which do not provide facilities for the housing, supply and servicing of aircraft. [En. Sec. 7, Ch. 12, L. 1939.]

2736.18. Restriction as to lights. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas, so that the same shall reflect, glare, or shine upon or in the direction of the airports. [En. Sec. 8, Ch. 12, L. 1939.]

2736.19. Effect of invalidity of part of act. If any portion or section or clause of this act shall be declared unconstitutional or invalid, such declaration shall not invalidate the remaining portion of this act that can be applied without the aid of the invalid portions, and to that extent and end, the provisions hereof are declared to be severable. [En. Sec. 9, Ch. 12, L. 1939.]

2736.20. Penalty for violations of act. Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. Each such person, firm or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued or permitted by such person, firm or corporation, and shall be punishable as provided by such law. [En. Sec. 12, Ch. 12, L. 1939.]

CHAPTER 250, FOREST FIRE PROTECTION—FIRE WARDENS

2763. Definition of terms. [Repealed Sec. 30, Ch. 128, L. 1939.]

2764. Ex-officio fire wardens—designation and compensation. [Repealed Sec. 30, Ch. 128, L. 1939.]

2767. Arrest without warrant of persons violating act. [Repealed Sec. 30, Ch. 128, L. 1939.]

2768. Duty of county attorney to prosecute offenders—failure of county attorney or magistrate to comply with duty. [Repealed Sec. 30, Ch. 128, L. 1939.]

2770. Disposition of fines. [Repealed Sec. 30, Ch. 128, L. 1939.]

2775-2778. [Repealed Sec. 30, Ch. 128, L. 1939.]

2778.1-2778.4. [Repealed Sec. 30, Ch. 128, L. 1939.]

CHAPTER 250-A, STATE BOARD OF FORESTRY—PROTECTION AND CONSERVATION OF FORESTS

2778.8. State board of forestry created—members—meetings—compensation. For the purposes of protection and conservation of forest resources, forest range and water, of regulation of stream flow, and of prevention of soil erosion, and for the further purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state of Montana and all of the public and private agencies with which it is now or later may be associated in such work, there is hereby created the Montana state board of forestry, hereinafter designated as the board. The board shall consist of seven members, who shall be appointed by the governor as follows: One member of the state water conservation board of Montana, during his continuance in such office, designated by such board; the dean of the Montana school of forestry during his continuance in such office; one elector of the state of Montana, appointed upon recommendation of the Blackfoot forest protective association, or its successors; one elector of the state of Montana, appointed upon recommendation of the northern Montana forestry association, or its successors; one elector of the state of Montana, appointed upon recommendation of the Montana lumber manufacturers' association, or its successors; one elector of the state of Montana, appointed upon the joint recommendation of the Montana stock growers' association and Montana wool growers' association, or their successors; and one elector of the state of Montana, appointed upon recommendation of the regional forester of region No. 1 of the United States forest service, as a representative of the United States forest service. The members appointed shall serve for a term of four years, or during their

continuance in office as the case may be. In the event of death, resignation or disqualification of any member of the board, his successor shall be appointed in the same manner that he was appointed, and shall serve for the remainder of his term. The board shall hold two regular meetings each year at the times and places designated by it. The dates of such regular meetings shall be shown in the permanent minute book of the board and notice of the date, time and place of each meeting shall be given in the manner prescribed by the board. The board shall at its first regular annual meeting each year elect a chairman to serve during the ensuing year. The state forester of Montana shall serve as secretary of the said board without compensation for such services or for any work done for the board, other than his regular compensation as state forester of Montana. No compensation shall be paid to any member of the said board by the state of Montana for any services rendered or work done, except that members of the board attending authorized regular or special meetings for transacting official business will be allowed actual expenses in attendance at such meetings. Special meetings may be called in the manner prescribed by the board. [En. Sec. 1, Ch. 128, L. 1939.]

2778.9. Function of the board. It shall be the function of the board to cooperate in an advisory capacity with the state water conservation board and all public and other agencies in the development, protection and conservation of the forest, range and water resources in the state of Montana, and to carry out the specific authorities and duties hereinafter imposed upon it. [En. Sec. 2, Ch. 128, L. 1939.]

2778.10. Definitions. The following words and phrases used in this act are hereby defined:

“Organized forest protection district” is defined as a definite forest land area, the boundaries of which are fixed, and wherein, through the medium of an agency recognized by the board, the forest land owners, whether state, county, municipal or private, pay the actual cost of fire protection and fire suppression on a pro rata basis for acreage owned within the district.

“Fire district” is defined as a subdivision of an organized forest protection district, or a forest area outside the boundaries of an organized forest protection district, but adjacent thereto and which can be made a part thereof.

“Recognized agency” is defined as an association of owners of forest lands in an organized forest protection district, organized for the purpose of providing forest protection and fire suppression in such district and financed by the owners in said district, and recognized by the board as giving adequate fire protection to such forest lands in accordance with rules and regulations prescribed by the board. Any public agency administering and protecting forest lands may also be recognized by the board as such an agency.

“Forest fire season” is defined as the period of each year beginning on May first and ending on September thirtieth, inclusive; provided, however, that in the event of excessive or great fire danger, the board may expand the said season within any district, or in any part thereof, for not more than thirty extra days, and when so expanded the board shall give such public notice thereof as it may deem necessary.

“Forest protection” is defined as the work of prevention, detection and suppression of fire in forest material or on forest land.

“Owner” is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation. [En. Sec. 3, Ch. 128, L. 1939.]

2778.11. Responsibility of owner and title holder—application of act to state forest lands. (a) In any instance where the owner as herein defined does not appear upon the public records as the holder of the legal title to such land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this act. In addition thereto, the holder of the legal title to such land or timber as it may appear upon the public records is hereby made secondarily responsible for the performance of the acts and duties imposed upon the owner by this act and is subject to the same liabilities and penalties as such owner. Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this act shall be upon the owner of the timber.

(b) This act shall apply to all forest lands within the state of Montana which shall be officially classified by the board as forest lands for which conservation and fire protection measures are reasonably required. [En. Sec. 4, Ch. 128, L. 1939.]

2778.12. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state as to forest lands for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create fire districts in any organized forest protection district upon recommendation thereof by the recognized agency in such district, the creation of such fire districts to be based upon differences in classification as to timber types, fire hazards, and cost of forest protection between such fire districts and other parts of the forest protection district in which the same are situated. When such fire districts are created by the board the assessment upon owners therein for the cost of forest protection as provided for by this act shall be fixed and determined in accordance with such classification.

(c) To provide for the protection of any forest lands by its own organization, or by contract or any other feasible means, independently or in cooperation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, that such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To cooperate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder. [En. Sec. 5, Ch. 128, L. 1939.]

2778.13. Advice concerning soil and forest conservation. The board is hereby authorized and empowered to give technical and practical advice to

the farmers of the state concerning soil and forest conservation and the establishment and maintenance of woodlots, windbreaks and shelters. [En. Sec. 6, Ch. 128, L. 1939.]

2778.14. Assistance to state board of land commissioners. The board is hereby directed to assist the state board of land commissioners in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions. [En. Sec. 7, Ch. 128, L. 1939.]

2778.15. Protection of state-owned forest lands. Where the state has title to forest lands within any organized forest protection district, it shall be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in such organized forest protection districts. [En. Sec. 8, Ch. 128, L. 1939.]

2778.16. Fire protection—duty of owner to provide—when board may furnish. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost of not less than one cent or more than five cents per acre per annum, and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this Act. [En. Sec. 9, Ch. 128, L. 1939.]

2778.17. Membership in forest protection agency sufficient compliance. Every owner of forest lands within an organized forest protection district, while a member of, or while participating in a recognized agency for forest protection shall be deemed to have fully complied with the requirements of section 2778.16. [En. Sec. 10, Ch. 128, L. 1939.]

2778.18. Collection of cost of forest protection. On or before the first Tuesday in September of each year, the secretary shall determine the actual cost per acre of forest protection furnished and provided by the board in each organized forest protection district, fire district and in all other forest land areas, said cost to be calculated to the end of the preceding fiscal year, June 30. The secretary shall further determine the names of all owners who shall have failed to provide the forest protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county clerk and recorder of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest protection which shall not exceed the maximum hereinbefore specified.

Upon receiving such certificate from the secretary showing the amounts due, the clerk and recorder shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in a special fund designated the foresters' cooperative work fund, as hereinafter provided for. [En. Sec. 11, Ch. 128, L. 1939.]

2778.19. Payment of costs under protest. Any owner who is required to pay to the county treasurer any sum for forest protection as required by this act and who contends that he is not legally obligated to pay such sum or some part thereof, shall pay the same to the county treasurer under written protest stating the reasons for such protest. Such payment under protest, and all proceedings subsequent thereto, shall be in conformity with the provisions of the law of the state of Montana, providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any such action to recover such payment under protest, all questions of the legality and reasonableness of the proceedings of the board may be reviewed and decided. [En. Sec. 12, Ch. 128, L. 1939.]

2778.20. Lien on timber for amounts due—foreclosure. Whenever the said board provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this act, the amount due for such forest protection shall be and become a lien upon such land or timber which shall continue until such time as the amount due shall have been paid. Such lien shall have the same force, effect and priority as general tax liens under the laws of the state of Montana, and shall be subject and inferior only to tax liens on such lands. The county attorney of the county in which such land is situated shall on request of the said board foreclose the said lien in the name of the state of Montana and in the manner provided by law, or said county attorney upon the request of the said board, shall institute an action against the forest landowner, in the name of the state, in any district or justice court having jurisdiction, to recover the debt, and the state in such action shall not be required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in such action shall conform as nearly as practicable to that provided by section 2254, Revised Codes of Montana of 1935. The remedies provided by this section shall be deemed cumulative and shall not affect the other provisions of this act for the payment and collection of amounts due to the board. [En. Sec. 13, Ch. 128, L. 1939.]

2778.21. Permit required to set fires in forests during fire season—campfires excepted, when. During the forest fire season or any expansion thereof, defined by this act, no person shall ignite or set any forest fire, or slash burning fire, or land clearing fire, or debris burning fire, or any open fire, within any forest lands, without having obtained an official written permit to ignite or set such fire from a fire warden or peace officer authorized by the board to issue such permits for such lands; provided, that no permit shall be required to build, set or ignite a campfire within and upon a desig-

nated improved camping ground, or upon a plot of land from which all vegetable and inflammable matter and debris shall have been removed to a point where it may not become ignited by the said campfire or by sparks therefrom. [En. Sec. 14, Ch. 128, L. 1939.]

2778.22. Penalty for failure to extinguish fire—allowing to spread. Any person who shall fail to extinguish any campfire set or ignited by him within any forest lands before leaving the same, or shall fail to extinguish any campfire used by him or left in his charge, before leaving the same, or who shall negligently allow such fire to spread from the plot described in section 2778.21, shall be guilty of a misdemeanor. [En. Sec. 15, Ch. 128, L. 1939.]

2778.23. Penalty for not complying with provisions of fire permit. Every person to whom a written permit shall have been issued to set or ignite a fire within forest lands during the forest protection season defined by this act, shall comply strictly with the provisions of such permit. If such person shall fail to comply with such provisions, or shall leave such fire unattended, or shall leave such fire before it shall have been totally extinguished, or shall negligently allow such fire to spread from or beyond the burning area defined by the said permit, he shall be guilty of a misdemeanor. The board, with the assistance of the state forester, shall prescribe the form and substance of such permit. [En. Sec. 16, Ch. 128, L. 1939.]

2778.24. Penalty for throwing lighted cigarette or other flame in forest during fire season. During the forest fire season, as defined by this act, any person who shall throw or place any lighted cigarette, cigar, ashes or other flaming or glowing substance or any substance or thing that may cause a fire, in any place where such lighted cigarette, cigar, match, ashes, or other flaming or glowing substance, or other substance or things, may directly or indirectly start a fire in or near any forest material, or throw from a vehicle any lighted cigarette, cigar, ashes or other flaming or glowing substance, or any substance or thing that may cause a fire, shall be guilty of a misdemeanor. [En. Sec. 17, Ch. 128, L. 1939.]

2778.25. Engines not to be operated without efficient spark arresters. During the forest fire season, as defined by this act, no person shall use, drive or operate within any forest lands, any wood or coal burning locomotive, logging engine, portable engine, traction engine, or stationary engine, or any coal or wood burning jammer or loader, or internal combustion engine, which is not equipped with a modern, efficient and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders and other burning material from the smoke stack, fire box, ash pan or exhaust of any such engine, jammer or loader. And it shall be unlawful for any person to operate any such engine, jammer or loader, within any forest lands during any forest protection season, except when such spark arrester and other devices herein defined are efficient, complete and properly installed for the purpose intended. [En. Sec. 18, Ch. 128, L. 1939.]

2778.26. Restriction as to sawmills on forest lands. No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of saw logs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for

the additional accumulation is granted by the state forester. Each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs in accordance with regulations issued by the board of forestry. [En. Sec. 19, Ch. 128, L. 1939.]

2778.27. Penalty for destroying signs placed under act. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning or notice issued by any federal, state, or forest protection agency under the provisions of this act and erected or posted at any point in the state, shall be guilty of a misdemeanor. [En. Sec. 20, Ch. 128, L. 1939.]

2778.28. Disposal of fines collected—costs. All fines collected in any court of the state under the provisions of this act shall be transferred to the state treasurer for deposit, in, and for the credit of, the foresters' cooperative work fund as hereinafter provided. Whenever a person is convicted in any court of a violation of this act, the court shall have power to levy and collect as costs in such case the amount necessary to compensate the county for the expenditures made in and for the prosecution of such offender against the provisions of this act. Such costs when collected shall be deposited by the court, with the proper county treasurer for the benefit of such county. [En. Sec. 21, Ch. 128, L. 1939.]

2778.29. State board of land commissioners and county commissioners to cooperate. The state board of land commissioners and boards of county commissioners may cooperate with the board to the extent legally permissible, in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The state board of land commissioners and the boards of county commissioners may list any forest lands under their jurisdiction with any recognized agency or the board for forest protection. Such moneys as the state and counties shall become liable for under the provisions of this section shall be paid from any funds provided by law for the protection of the forest lands owned by the state and counties. [En. Sec. 22, Ch. 128, L. 1939.]

2778.30. Disposal of money received—use of funds. In compliance with section 1830.10 of the Revised Codes of Montana, 1935, all moneys received from all public agencies, private agencies and individuals cooperating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' cooperative work fund. The following funds may be expended as directed by the board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the cooperative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other cooperative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where such forest

plantings are helpful, and funds for other cooperative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated. [En. Sec. 23, Ch. 128, L. 1939.]

2778.31. Payments from foresters' cooperative work fund. All cooperative moneys collected, appropriated, or allocated for the use of the state forester and deposited with the state treasurer in the foresters' cooperative work fund, shall be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof. The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act. [En. Sec. 24, Ch. 128, L. 1939.]

2778.32. Ex-officio fire wardens. The officers, employees and persons hereinafter designated are hereby declared ex-officio fire wardens to serve without compensation for the purpose of enforcing the penal provisions of this act: Members of the Montana state board of forestry, the state forester and all regular employees of his office, officers of organized forest protection districts, members of the Montana highway patrol, all field officers, in the United States forest service residing in Montana, game and deputy game wardens, officers of the national park service and the Indian service situated in Montana. Such ex-officio fire wardens shall have all the powers vested by section 1834, Revised Codes of Montana of 1935 in fire wardens. [En. Sec. 25, Ch. 128, L. 1939.]

2778.33. Powers of state forester—office of board. The state forester shall be the agent of the said board and he shall have power to enforce any and all provisions of this act and the rules and regulations of the board made thereunder. He shall be the representative of the board in organizing forest protection districts to be approved by the said board. He shall be the co-ordinating officer of the board in the co-ordination of the work and efforts of all agencies cooperating with the said board, in the protection of forest land, and in the prevention and abatement of any forest fire nuisances thereon, under the provisions of this act. He shall be the expert adviser of the board and of agencies cooperating with the board and existing under this act, in all matters relating to the creation of forest protection districts, and disposal of slash and slash hazards, the prevention and suppression of forest fires and forest fire nuisances, within forest protection districts. His office shall be the principal place of business of the board and all orders, rules, regulations, maps, documents, publications, minutes of regular and special meetings of the board, notices, forms, correspondence, petitions and all and every paper connected with any part of the official business of the board shall be filed in his office. Such records shall be open to public inspection during business hours subject to such reasonable rules as the board may prescribe in writing for the protection of such records and the convenience of the public and the employees of the state forester. [En. Sec. 26, Ch. 128, L. 1939.]

2778.34. Penalties for violations of act. Any person who violates any term or provisions of this act, or any rule or regulation promulgated by

the board pursuant to this act, is hereby declared to be guilty of a misdemeanor unless otherwise provided by this act, and shall be punished by a fine of not more than five hundred dollars (\$500.00) or imprisonment in a county jail for not more than six (6) months, or both such fine and imprisonment. [En. Sec. 27, Ch. 128, L. 1939.]

2778.35. Purpose of act. It is the intent and purpose of this act not to impose or levy, or cause to be imposed or levied, any tax upon the property of any persons. This act is passed and adopted in the exercise of the police power of the state of Montana to conserve and protect the forests and resources of the state as herein provided. All payments required by the act by owners of forest lands are hereby declared to be compensation for benefits actually received by such owners in the protection of their lands as herein provided for. [En. Sec. 28, Ch. 128, L. 1939.]

CHAPTER 252. REGULATION OF THE MANUFACTURE, STORAGE AND SALE OF EXPLOSIVES

2786. Definitions.

Held, that the statute regulating the manufacture, sale, etc., of "explosives" (sec. 2786 et seq., Rev. Codes) has no application to gasoline or other products of crude oil, as against the contention that

under it the erection of an oil refinery within a residential district of a city is prohibited." *Purcell et al. v. Davis et al.*, 100 M 480, 495, 50 P 2d 255.

2806. Regulating sales of explosives.

References

State v. Williams, 106 M 516, 523, 79 P 2d 314.

2808. Storage of explosives in cities, etc.

Held, that the statute regulating the manufacture, sale, etc., of "explosives" (sec. 2786, et seq., Rev. Codes) has no application to gasoline or other products of crude oil, as against the contention that under it the erection of an oil refinery

within a residential district of a city is prohibited. *Purcell et al. v. Davis et al.*, 100 M 480 et seq., 50 P 2d 255.

References

State v. Williams, 106 M 516, 523, 79 P 2d 314.

2812. Careless use of explosives a misdemeanor.

An information charging one as an accessory of another in the violation of the provisions of section 2812, Revised Codes, prohibiting the reckless use of highly explosive substances by which others may be endangered, held insufficient, such offense being declared by that section as a misdemeanor; the contention of the state that since by section 2813, a part of the same act, a violation of any provision of the act is made punishable by imprisonment in the state penitentiary, the offense becomes a felony, not being meritorious.

State v. Williams, 106 M 516, 522 et seq., 79 P 2d 314.

Id. In application of the last above rule to sections 2806-2814, Revised Codes, regulating the handling of explosives and parts of the same act, held that section 2813 declaring penalties is a general provision, that sections 2812 and 2814 must be regarded as exceptions thereto, and that therefore section 2812, involved in the instant case, is controlling as to the gravity of the offense committed.

2813. Penalties.

An information charging one as an accessory of another in the violation of the provisions of section 2812, Revised Codes, prohibiting the reckless use of highly explosive substances by which others may be endangered, held insufficient, such offense being declared by that section as a misdemeanor; the contention of the state that since by section 2813, a part of the same act, a violation of any provision of the act is made punishable by imprisonment in the state penitentiary, the offense becomes a felony, not being meritorious.

State v. Williams, 106 M 516, 523, 79 P 2d 314.

Id. In application of the last above rule to sections 2806-2814, Revised Codes, regulating the handling of explosives and parts of the same act, held that section 2813 declaring penalties is a general provision, that sections 2812 and 2814 must be regarded as exceptions thereto, and that therefore section 2812, involved in the instant case, is controlling as to the gravity of the offense committed.

2814. Penalty when death caused by violation of this act.

Sections 2806-2814, Revised Codes, regulating the handling of explosives and parts of the same act, held that section 2813 declaring penalties is a general provision, that sections 2812 and 2814 must be re-

garded as exception thereto, and that therefore section 2812, involved in the instance case, is controlling as to the gravity of the offense committed. *State v. Williams*, 106 M 516, 523, 79 P 2d 314.

CHAPTER 254, MONTANA BEER ACT**2815.10. Citation of act.**

Delegation of power to the State Board of Equalization acting ex officio as the board to which is confided the administration of the Montana Beer Act (secs. 2815.10 et seq., Revised Codes), to make rules and regulations for the proper carrying into effect of the Act, held not objectionable as a delegation of legislative

power. *State v. District Court et al.*, 103 M 487, 496, 63 P 2d 141.

References

State ex rel. Nagle v. Naughton et al., 103 M 306, 319, 63 P 2d 123.

State ex rel. McIntire v. City Council of Libby, 107 M 216, 218, 82 P 2d 587.

2815.11. Definitions. In this act, the expression

(a) "Board" as used in this act means the Montana liquor control board, which shall administer the Montana beer act, under its provisions ex-officio and without additional compensation.

(b) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any other similar products in drinkable water.

(c) "Brewer" means any person having a factory or an establishment adapted for the making of beer.

(d) "Club" means any association of individuals for purposes of mutual entertainment and convenience and shall include the premises applied or used for any such purpose.

(e) "Club member" means a person who, whether as a charter member or admitted according to the by-laws or rules of the club, has become a member thereof who maintains his membership by the payment of his regular periodic dues in the manner provided by such rules or by-laws and whose name and address are entered in the list of membership supplied to the board at the time of the application for a club license under this act, or if admitted thereafter within ten (10) days after his admission.

(f) "Person" includes every partnership, corporation, or association.

(g) "Retailer" means any person engaged in the sale and distribution of beer, either on draught or in bottles, to the public to be served and consumed on the premises of such retailer, or in the sale or distribution of beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off such premises.

(h) "Vehicle" means any means of transportation by land or by water or by air and includes everything made use of in any way whatever for such transportation

(i) "Wholesaler" means any person having a store or establishment for the sale and distribution of beer in wholesaling or jobbing quantities, or for the sale and distribution of beer in original packages to the public with intent that such packages shall be delivered or taken away from the premises of such wholesaler in unbroken package for consumption off the premises of such wholesaler. [As amended Sec. 6, Ch. 30, L. 1937.]

2815.13. Beer—when non-intoxicating—when sale by liquor board prohibited. Beer containing one half of one per cent ($1\frac{1}{2}\%$), or more, of

alcohol by volume and not more than three and two-tenths per cent (3.2%) of alcohol by weight, is hereby declared to be non-intoxicating and such beer and other beer permitted by the congress of the United States may be manufactured and sold; provided that beer containing not more than four per cent (4%) of alcohol by weight may be manufactured and/or sold or transported in and into this state or possessed therein in the manner and under conditions prescribed by the laws of this state and not otherwise. The sale of beer by the Montana liquor control board is hereby prohibited, save and except ale, porter and stout containing more than four per cent (4%) of alcohol by weight. [En. Sec. 1, Ch. 89, L. 1937.]

2815.17. Penalty for brewers' failure to file statement. Any such tax not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any brewer who fails, neglects or refuses to make the return to the board provided for in section 2815.16 hereof, or refuses to allow such examination, as provided for in section 2815.16 hereof, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00). [As amended Sec. 1, Ch. 220, L. 1939.]

2815.25. Penalty for wholesalers' failure to file statement—payment of tax. With such return, the said wholesaler shall pay to the board the amount of tax upon all beer not manufactured in this state, on the basis hereinafter provided, which shall have been sold by him during such previous month. Any such tax not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any wholesaler who fails, neglects or refuses to make the return to the board provided for in section 2815.24 hereof, or refuses to allow such examination as provided for in section 2815.24 hereof, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00). [As amended Sec. 2, Ch. 220, L. 1939.]

2815.30. Retailers' license—application and issuance—display required—check of alcoholic content by board.

Under the rule of statutory construction that a relative clause must be construed to relate to the nearest antecedent that makes sense, held that the provision of section 2815.45 relative to the cancellation or suspension of beer licenses when the Beer Control Board shall find "upon such examination" that the provisions of the

act were violated by a licensee, refers to the examination of the books of account of the retailer and the premises occupied by him in doing business mentioned in section 2815.30 of the statute. *State v. District Court et al.*, 103 M 487, 500 et seq., 63 P 2d 141.

2815.44. Fees for licenses—expiration date—regulation by cities and towns

References

State ex rel. McIntire v. City Council of Libby, 107 M 216, 219, 82 P 2d 587.

2815.45. Revocation or suspension of license.

Under the rule of statutory construction that a relative clause must be construed to relate to the nearest antecedent that makes sense, held that the provision of section 2815.45 relative to the cancellation or suspension of beer licenses when the Beer Control Board shall find "upon such examination" that the provisions of the act

were violated by a licensee, refers to the examination of the books of account of the retailer and the premises occupied by him in doing business mentioned in section 2815.30 of the statute. *State v. District Court et al.*, 103 M 487, 500 et seq., 63 P 2d 141.

2815.52. Sale of beer by state board of liquor control unlawful. [Repealed Sec. 10, Ch. 30, L. 1937.]

CHAPTER 255, STATE LIQUOR CONTROL ACT OF MONTANA**2815.60. Citation of state liquor control act.**

Under Chapter 166, Laws of 1935, original jurisdiction is conferred on the district court in all criminal actions arising out of violations of the State Liquor Control Act (Chap. 105 Laws of 1933); hence a demurrer to an information charging such a violation interposed on the ground that a misdemeanor being charged, jurisdiction was in a justice of the peace court, did not lie. *State v. Driscoll*, 101 M 348 et seq., 54 P 2d 571.

Id. Held, that the Liquor Control Act (Chap. 105, Laws of 1933) is not invalid as providing revenue for the support and maintenance of the state by means other than taxation of property or a license tax.

Id. Held, that the contention that Chapter 105, Laws of 1933, the State Liquor Control Act, which originated in the state senate, and the purpose of which is to regulate the manufacture and sale of intoxicating liquor but which incidentally

results in profits to the state from its operation of state liquor stores, is unconstitutional as one enacted for the raising of revenue and hence should have originated in the house of representatives, may not be sustained.

Id. Title to Chapter 105, Laws of 1933, regulating the sale of intoxicating liquor, creating the liquor control board and providing for sale of liquor by state stores, etc., held not to offend against the constitutional provision that the subjects of the act must be clearly expressed in its title.

While under Chapter 29, Penal Code 1921, the sale of intoxicating liquor was made a nuisance, such sale is not now, either under section 8642, nor by the provisions of Chapter 255, Political Codes of 1935, the Liquor Control Act, necessarily a nuisance. *State ex rel. Nagle v. Naughton et al.*, 103 M 306, 316 et seq., 63 P 2d 123.

2815.63. Montana liquor control board—composition—powers—compensation—administrator—assistant—salaries. The "Montana liquor control board" shall consist of three members not more than two of whom shall be of the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one of such members shall be appointed to hold office for a term of two years, and two of such members shall be appointed to hold office for a term of four years; and provided, further, that the members of said board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one shall end March 1, 1939, and the term of two shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature, next preceding the commencement of the term for which the appointment is

made; provided, that the governor shall nominate and transmit to the state senate the names of the first members of the said board, on or before the 3rd day of March, 1937. Each of the members of the Montana liquor control board shall receive, as compensation for his official services, the sum of ten dollars (\$10.00) per diem, for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, together with the traveling expenses while away from home in the performance of the duties of his office, the maximum amount each member of the commission shall receive for per diem shall not exceed five hundred dollars (\$500.00) per annum. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board. The board shall choose one of its own members as chairman, and shall appoint a state liquor administrator, who shall not be a member of the board and who shall be ex-officio the secretary of the board. The board may also, in its discretion, appoint an assistant state liquor administrator and other employees. Each member of the board shall take and file the constitutional oath of office before entering the performance of his duties, and he shall give bond conditioned for the faithful performance of his duties, in the sum of twenty-five thousand dollars (\$25,000.00). A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall have the powers and duties herein specified and the administration of the state liquor control act of Montana and the Montana beer act, including the general control, management and supervision of all state liquor stores, but the board is authorized to delegate to the state liquor administrator the general control, management and supervision of all state liquor stores, including the power to purchase supplies for same and the power to hire and discharge employees of the board, subject, however, to such regulations and restrictions as the board may impose upon the state liquor administrator.

The board shall fix the salary of the state liquor administrator in such sum as it deems advisable, not exceeding five thousand dollars (\$5000.00) per year, and it shall fix the salary of the assistant state liquor administrator at such sum as it deems advisable, not exceeding four thousand dollars (\$4000.00) per year. The board shall fix the salaries of all other employees of the board, but in no case shall the salaries of such other employees exceed the sum of three thousand dollars (\$3000.00) per year.

The assistant state liquor administrator shall exercise such powers and perform such duties in the administration of the state liquor control act and Montana beer act as the board may prescribe. [As amended Sec. 1, Ch. 30, L. 1937.]

2815.65. Administrator—oath—bond—duties. The state liquor administrator, before entering upon the performance of his duties, shall take and file the constitutional oath of office and he shall give bond in such sum as the board may determine, and he shall devote his whole time and attention to the administration of the state liquor control act of Montana and the Montana beer act and shall receive no other compensation from any source whatsoever, or follow no other occupation. [As amended Sec. 2, Ch. 30, L. 1937.]

2815.66. Term of office of administrator and assistant. The state liquor administrator and the assistant state liquor administrator, if one is ap-

pointed by the board, shall hold office during the pleasure of the board. [As amended Sec. 3, Ch. 30, L. 1937.]

2815.69. State liquor stores—establishment—hours—kinds and prices of liquors. The board shall establish and maintain at county seats and such other places as the board deems advisable, one or more stores to be known as “state liquor stores”, for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder, and the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business on Sundays, legal holidays, and election days. [As amended Sec. 4, Ch. 30, L. 1937.]

2815.75. Time for sale of liquor from state stores. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor

- (a) on any holiday;
- (b) on any day on which polling takes place at any national or state election held in the electoral district in which the store is situated;
- (c) on any day on which polling takes place at any municipal election held in the municipality in which the store is situated;
- (d) during such other period and on such other days as the board may direct. [As amended Sec. 5, Ch. 30, L. 1937.]

2815.77. Permits for residents and temporary residents—special permits—fees. (1) There shall be two classes of permits under this act:

- (a) Individual permits;
 - (b) Special permits.
- (2) Upon application in the prescribed form being made to the board, or to any official authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the board, or such official being satisfied that the applicant is entitled to a permit for the purchase of liquor under this act, the board or such official shall issue to the applicant a permit of the class applied for, as follows:

(a) An “individual permit” in the prescribed form may be granted to an individual of the full age of twenty-one years, who has resided in the state, for the period of at least one month immediately preceding the date of his making the application, and who is not disqualified under this act, entitling the applicant to purchase liquor for beverage, medicinal or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this act, and the regulations made thereunder;

(b) An “individual permit” in the prescribed form may be granted to an individual of the full age of twenty-one years, who is temporarily resident or sojourning in the state, and who is not disqualified under this act, entitling the applicant during a period not exceeding one month to purchase liquor for beverage, medicinal, or culinary purposes in accordance with the terms and provisions of the permit, and the provisions of this act and the regulations made thereunder.

(c) A “special permit” in the prescribed form may be granted to a druggist, physician, dentist, or veterinary, or to a person engaged within

the state in mechanical or manufacturing business, or in scientific pursuits, requiring liquor for use therein, entitling the applicant to purchase liquor for the purpose named in such "special permit", and in accordance with the terms and provisions of such "special permit" and in accordance with the provisions of this act, and the regulations made thereunder;

(d) A "special permit" in the prescribed form may be granted, to a minister of the gospel, entitling the applicant to purchase wine for sacramental purposes only in accordance with the terms and provisions of such "special permit";

(e) A "special permit" in the prescribed form may be granted, when authorized by the regulations, entitling the applicant to purchase liquor for the purpose named in the permit and in accordance with the terms and provisions of such permit, and of this act, and the regulations made thereunder.

"(3) (a) For an individual permit under clause (a) of subsection 2 hereof—

Entitling holder to purchase spirits, wine, beer and malt liquor, the fee shall be fifty cents;

Entitling holder to purchase beer only, the fee shall be fifty cents;

Entitling holder to make a thirty day purchase, whether of spirits, wine, beer or malt liquor, the fee shall be twenty-five cents;

(b) For an individual permit under clause (b) of subsection 2 hereof—
Entitling holder to purchase spirits, wine, beer or malt liquor, the fee shall be fifty cents;

Entitling holder to make a single purchase whether of spirits, wine, beer or malt liquor, the fee shall be twenty-five cents;

(c) The fees for a "special permit" under clauses (c), (d) and (e) of subsection 2 hereof shall be fixed and determined by the regulations made hereunder

(4) No one, who has been convicted of keeping, frequenting or being an inmate of a disorderly house, shall be entitled to a permit until after the expiration of one year from the date of such conviction.

(5) Notwithstanding any other provisions of this act, the board may in its discretion cancel any subsisting permit or refuse or direct any official authorized to issue permits to refuse to issue a permit to any person and no official so directed shall issue any such permit. [As amended Sec. 1, Ch. 3, L. 1937.]

2815.104. Sale of liquor unlawful, when—foreign substance in liquor forbidden—possession of liquor, when unlawful.

Information charging unlawful sale of intoxicating liquor in the language of subsection 1, held not demurable as uncertain and ambiguous; if too general in char-

acter, défendant had a plain remedy by application for a bill of particulars. *State v. Driscoll*, 101 M 348 et seq., 54 P 2d 571.

2815.154. Disposition of money received—obligations of board not debts of state. All moneys received from the sale of liquor at the state liquor stores or from license fees or taxes or otherwise, arising in the administration of this act, shall be paid to the board, and the board is hereby authorized to make such expenditures as from time to time becomes necessary in the administration of this act, including in such expenditures all salaries, expenses of officers, agents and employees, and all proper expen-

ditures incurred in acquiring property and merchandise in connection with the administration of this act, and no obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores, and the board shall pay into the state treasury the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores. [As amended Sec. 1, Ch. 54, L. 1939.]

2815.164. Liquor board to administer beer act. The power and authority to administer the Montana beer act, heretofore vested in the state board of equalization, is hereby transferred from the state board of equalization to the Montana liquor control board, and all power and authority in regard to the administration of the Montana beer act is hereby vested in the Montana liquor control board. [En. Sec. 7, Ch. 30, L. 1937.]

2815.165. Violations of liquor control act—penalties. Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is knowingly manufactured, sold, or bartered, in violation of the state liquor control act of Montana and all property knowingly kept and used in maintaining the same is hereby declared to be a common “nuisance”, and any person who maintains such a common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) and by imprisonment not less than thirty days, nor more than six months. [En. Sec. 8, Ch. 30, L. 1937.]

2815.166. Actions to abate nuisances. An action to enjoin any nuisance defined in this act, may be brought in the name of the state of Montana by the attorney general of the state or any county attorney. Such action shall be brought and tried as an action in equity, and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits, or otherwise, to the satisfaction of the court or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may require from the applicant for such restraining order a bond in such sum as deemed advisable, if such application be made by a person other than a duly qualified and acting officer of the state or any political sub-division thereof and upon approval of such bond by the judge of said court issue an order restraining the defendant and all other persons from removing the fixtures or other things used in connection with the violation of this act, constituting such nuisance. Such action shall be prosecuted and tried in the same manner and the court shall grant the same relief as in suits to abate nuisances for violation of the Montana beer act. [En. Sec. 9, Ch. 30, L. 1937.]

CHAPTER 255-A, RETAIL SALE OF LIQUOR

2815.167. Declaration of policy—retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to in-

sure the entire control of the sale of liquor in the Montana liquor control board, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said board be empowered and authorized to grant licenses to persons qualified under this act, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this act and under rules and regulations promulgated by the said board, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this act. The restrictions, regulations and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of the state. [En. Sec. 1, Ch. 84, L. 1937.]

Held Constitutional.

State ex rel. Haynes v. District Court, 106 M 470, 473 et seq., 78 P 2d 937.

Held, that a city council could properly, under the statutes, limit the number of places in the city in which beer and liquor at retail might be sold, and after such limit had been reached could properly refuse to issue a license to one to whom a license issued by the State Liquor Control Board had been assigned, and in doing so was not depriving him of property without due process of law. State v. City Council of

City of Libby, 107 M 216, 218 et seq., 82 P 2d 587.

References

State ex rel. Haynes v. District Court et al., 105 M 89, 70 P 2d 440.

NOTE.—Chapter 84 of the Laws of 1937 was, by the filing of proper referendum petitions, referred to the people of the state and adopted at the general election held November 8, 1938, declared adopted by proclamation of the governor January 21, 1939.

2815.168. Definitions. The following words and phrases used in this act shall be given the following interpretation:

1. "Board" means the Montana liquor control board.
2. "Club" means a national fraternal organization, except college fraternities, or an association of individuals organized for social purposes and not for profit, with a permanent membership and an existence of two years prior to making application for license with permanent quarters or rooms.
3. "State liquor store" means a liquor store established and operated by the Montana liquor control board under the laws of Montana.
4. "License" means a license issued by the Montana liquor control board to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor at retail as provided in this act.
5. "Licensee" means the person to whom a license is issued.
6. "Person" means every individual, co-partnership, corporation, hotel, restaurant, club and fraternal organization, and all licensed retailers of liquor, whether conducting the business singularly or collectively.
7. "Liquor" means all kinds of liquor sold by and/or in a state liquor store.
8. "Interdicted person" means a person to whom the sale of liquor is prohibited under the laws of Montana.

9. "Rules and regulations" means rules and regulations made and promulgated by the Montana liquor control board in accordance with the provisions of this act.

All other words and phrases used in this act, the definition of which is not herein given, shall be given the ordinary meaning. [En. Sec. 2, Ch. 84, L. 1937.]

2815.169. Licenses to retail liquor. The Montana liquor control board is hereby empowered, authorized and directed to issue licenses to qualified

applicants as herein provided, whereby the licensee shall be authorized and permitted to sell liquor at retail, and upon the issuance of such license the licensee therein named shall be authorized to sell liquor at retail but only in accordance with the rules and regulations promulgated by the said board and the provisions of this act. Qualified applicants shall include persons, hotels, clubs, fraternal organizations and railway systems. [En. Sec. 3, Ch. 84, L. 1937.]

2815.170. License fees. Each licensee licensed under the provisions of this act shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of cities, towns and villages, or in cities, towns or villages with a population of less than two thousand (2,000), two hundred dollars (\$200.00) per annum;

(b) Except as hereinafter provided, for each license in cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred dollars (\$300.00) per annum;

(c) Except as hereinafter provided, for each license in cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, four hundred fifty dollars (\$450.00) per annum;

(d) For each license in cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, six hundred dollars (\$600.00) per annum;

(e) For each railway system in the state of Montana, three hundred dollars (\$300.00) per annum;

(f) For each fraternal organization or club, one hundred dollars (\$100.00) per annum, provided, however, that the term "fraternal organization" as here used, shall include only those lodges and associations having a known and defined existence; and provided, however, that the term "club" as here used, shall mean an association of persons for the promotion of some common object other than the sale of liquor, with a permanent membership into which admission cannot be obtained by any person at his pleasure and which is primarily operated for the benefit of its members and not for the gain or profit of its operators; and provided, further, that it shall be unlawful for any fraternal organization or club to sell or serve liquor to the public as a commercial business and the board may at any time require such fraternal organization or club to furnish evidence of its bona fide existence and may refuse or suspend a license if it is found that such applicant or licensee does not conform or is not conforming to this act.

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later

direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively. [En. Sec. 4, Ch. 84, L. 1937; Amd. Sec. 4, Ch. 221, L. 1939.]

2815.171. Application for license—penalty for false statements. Prior to the issuance of a license by the Montana liquor control board, any applicant for such license shall have first appeared before the licensing authority of the incorporated city or town in which the premises are to be licensed, or if such premises are situate outside of the boundaries of an incorporated city or town, the applicant for a license shall have appeared before the county commissioners of the county in which the premises are to be licensed, and from such authorities receive written approval of the application for license; whereupon the applicant shall file such written approval, properly authenticated by such city licensing authorities or board of county commissioners, along with an application in writing, to the Montana liquor control board, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the liquor is to be sold, as may be required by the Montana liquor control board. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the applicant, or applicants, subjected to the penalties provided by law.

And provided that nothing herein shall be construed as granting any additional powers to any city or county licensing board relating to the limitations of this act not herein expressly conferred. [En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939.]

2815.172. Investigation of applications. Upon receipt of an application for a license under this act, accompanied by the necessary license fee and bond, the board shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this act and the rules and regulations promulgated by the board are met and complied with. [En. Sec. 6, Ch. 84, L. 1937.]

2815.173. Licenses for dining and buffet cars. Any railroad operating a dining and buffet car in connection with regular operated train service desiring a license to sell liquor under the provisions of this act in said dining and buffet car, shall first apply to the board for a license so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application, or otherwise, that the applicant is qualified, the board shall issue a license to such railroad for the sale of liquor by such carrier in all of its dining and buffet cars, which shall at all times be prominently displayed in the cars where liquor is served. Upon the payment of the one license fee herein required to be paid, duplicates of said license shall be provided by the board, to be posted in the different cars

operated within the state under the one license. [En. Sec. 7, Ch. 84, L. 1937.]

2815.174. Form of license—authority—expiration. Every license issued under this act shall set forth the name of the person to whom issued, the location by street and number of the premises where the business is to be carried on under said license, and such other information as the board shall deem necessary. If issued to a partnership the names of the persons conducting the business. Such license shall be signed by the licensee, shall be non-transferable except and only with the consent of the board, shall be posted in a conspicuous place on the premises in respect to which it is issued and shall be exhibited to any duly authorized representative of the board whenever the same is requested. Every license issued under the provisions of this act is separate and distinct, and no person, except the licensee therein named, shall exercise any of the privileges granted thereunder, and all licenses are applicable only to the premises in respect to which they are issued. All licenses shall expire on January first of each year. [En. Sec. 8, Ch. 84, L. 1937.]

2815.175. Limit one license—beer license required. No person shall be granted more than one license in any year. No person, club, or fraternal organization shall be entitled to a license under this act unless such person, club, or fraternal organization shall have a beer license issued under the laws of Montana. [En. Sec. 9, Ch. 84, L. 1937.]

2815.176. Licenses not issued to whom. No license shall be issued by the board to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, or the laws of the federal government or the state of Montana.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board,

6. A person who is not a citizen of the United States and who has not been a citizen of the state of Montana for at least five (5) years and who has not been a citizen of the county in which the license is to be issued for at least one (1) year. [En. Sec. 10, Ch. 84, L. 1937.]

2815.177. Restrictions on sales by licensees. No licensee or his or her employee or employees shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of twenty-one (21) years.

2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

3. A habitual drunkard.

4. An interdicted person.

5. Any minor, Indian or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining liquor, beer or wine from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 2815.204. [En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939.]

2815.178. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

- (a) Sunday, from two a. m. to one p. m.;
- (b) On any other day between two a. m. and eight a. m.;
- (c) On any day of a general or primary election during the hours when the polls are open, excepting bond elections. When any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which the sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town. [En. Sec. 12, Ch. 84, L. 1937.]

2815.179. Licensees not allowed near churches or schools—exceptions. No license shall be granted for any premises which shall be on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, synagogue or other place of worship, or school, except a commercially operated school; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; except, however, that no license shall be denied because such restriction may apply to any premises so located which are maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society except similar places of business established and in actual operation for one year prior to the passage and approval of this act. [En. Sec. 13, Ch. 84, L. 1937.]

2815.180. Sale of liquor to licensees—price. The board is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this act at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the Montana liquor control board and in addition thereto an excise tax as in this act provided. [En. Sec. 14, Ch. 84, L. 1937.]

2815.181. Collection of excise tax on liquor. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of eight per centum of the retail selling price on all liquor so sold and delivered. The Montana liquor control board shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month. [En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939.]

2815.182. Invoices of liquor sold. The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the

liquor purchased as provided by said board, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the board. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the board. [En. Sec. 16, Ch. 84, L. 1937.]

2815.183. Unlawful to sell liquor not purchased from state—penalty. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a state liquor store, shall, upon conviction, be fined not less than five hundred dollars (\$500.00) nor more than fifteen hundred dollars (\$1500.00), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the board shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said board immediately revoke the license of said licensee. [En. Sec. 17, Ch. 84, L. 1937.]

2815.184. Selling liquor without license—penalty. Any person, who has not been issued a license under this act, who shall sell or keep for sale any alcoholic liquor, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1000.00) nor more than five thousand dollars (\$5,000.00), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment. [En. Sec. 18, Ch. 84, L. 1937.]

2815.185. Sale at less than posted price forbidden. It shall be unlawful for any licensee under the provisions of this act to resell any liquor purchased by such licensee from a state liquor store for a sum less than the posted price established by the said store and paid by the licensee therefor. [En. Sec. 19, Ch. 84, L. 1937.]

2815.186. Liquor board employees not to deal in liquor. No member or employee of the board, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, share holder or otherwise, whether for his own benefit or in a fiduciary capacity for others. [En. Sec. 20, Ch. 84, L. 1937.]

2815.187. Officers may seize illegal liquor. Any sheriff, police officer, or inspector appointed under this act, who shall find any alcoholic beverages, liquor or moonshine which is kept or held by any person for sale or other disposition in violation of this act, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the said liquor and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed. [En. Sec. 21, Ch. 84, L. 1937.]

2815.188. Board to make regulations—furnish forms and records. For the purpose of the administration of this act the board shall make, promulgate and publish such rules and regulations as the said board may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance thereof shall be no defense. Without limiting the generality of the foregoing provision, the said board shall be empowered and it is made its duty to prescribe forms to be used in the administration of this act, the proof to be furnished and the conditions to be observed in the issuance of licenses, prescribing forms or records to be kept of the sale of liquor by stores, prescribing notices required by this act or the regulations thereof, and the manner of giving and serving the same, prescribing, subject to the provisions of this act, the conditions and qualifications necessary to obtain a license, the books and records to be kept by the licensee, the form of returns to be made by them, and providing for the inspection of such licensed premises, specifying and describing the place and manner in which the liquor may be lawfully kept or stored, covering the conduct, management and equipment of premises licensed to sell liquor and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business of licensees. [En. Sec. 22, Ch. 84, L. 1937.]

2815.189. Investigation of licensees. The board may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee hereunder, and shall have power to temporarily suspend and/or permanently revoke a license issued under this act for violation of the provisions of this act or any rule or regulation promulgated by the board. [En. Sec. 23, Ch. 84, L. 1937.]

2815.190. Charges against licensees—procedure. Upon the filing with the board of a verified complaint charging the licensee with the commission of any act which would be cause for the suspension or revocation of a license, within one year prior to the date of filing said complaint, the above said board shall forthwith issue a citation directing the licensee to appear before the said board within ten days after the date of the service of said citation and, by filing his verified answer to the complaint, show cause, if any, why his license should not be suspended or revoked. Service of the citation may be effected by mailing a true copy thereof with a true copy of the complaint by registered mail addressed to the licensee at his last address of record or by the sheriff of the county in which the licensee resides. Failure of the licensee to answer shall be deemed an admission by him of the truthfulness of the charge made and thereupon the said board shall be authorized to forthwith suspend or revoke the license. [En. Sec. 24, Ch. 84, L. 1937.]

2815.191. Hearing—decision—appeals to district court. Upon the filing of the answer of the board shall fix the time and place of the hearing on the charges made, which hearing shall be in the county where the licensee resides, and not less than five (5) days notice of said hearing shall be given to the complainant and licensee. The notice of hearing shall be

served in the same manner as is the citation herein provided for. With the notice of the hearing to the complainant, there shall be attached a true copy of the answer of the licensee. If either party has appeared by counsel the notice shall be given in like manner to the counsel of said party. Upon the hearing the board shall hear the evidence presented, which may be in the form of oral testimony or affidavits, or both. After the hearing has been concluded the said board shall, within ten days, render its decision in writing, stating the reasons therefor. Notice of the decision, with copy thereof, shall be served upon the parties, or their counsel, in the manner herein provided as to other notices. When the board shall have revoked or cancelled a license previously issued by it, the board shall notify the licensee in writing by registered mail, to the address of such licensee, of its action, giving reasons thereof, and thereupon such licensee shall have the right to appeal to the district court of the county in which he shall reside, from the action of the board, by filing a notice of appeal with the clerk of the district court and paying the filing fee required to commence a suit or action in the district court, which appeal must be so taken within thirty (30) days after the order made and entered by the board. The trial shall be had before the district court upon the record presented to the board, and upon which its decision was rendered, and there shall not be any additional evidence introduced or anything in the nature of a trial de novo. Pending decision on appeal the licensee must file a good and sufficient bond in the sum of two thousand dollars (\$2,000.00), payable to the state of Montana, conditioned that he will pay all costs and be responsible for any and all violations of the law on his premises, pending final disposition of the appeal. [En. Sec. 25, Ch. 84, L. 1937.]

2815.192. Officers may examine premises. The board or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of such licensee as to whether the law of Montana and the rules and regulations of the said board are being complied with, and shall also have a right to inspect cars of any railway system licensed under this act. [En. Sec. 26, Ch. 84, L. 1937.]

2815.193. Renewal of suspended licenses. After suspension or revocation of a license the board shall have the power to renew the same if in its discretion a proper showing therefor has been made. [En. Sec. 27, Ch. 84, L. 1937.]

2815.194. City and county licenses—fee. The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a license has been issued under the provisions of this act, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the board from such licensee under this act. [En. Sec. 28, Ch. 84, L. 1937.]

2815.195. Disposal of receipts. All receipts from license fees, fines and penalties collected under the provisions of this act shall be paid to the state treasurer and by him apportioned and allocated as follows: Fifty per cent (50%) to the state public school general fund and fifty per cent (50%) to the public welfare fund for the administration of the social security laws. [En. Sec. 29, Ch. 84, L. 1937.]

2815.196. Effective date of act—protests—elections. The provisions of this act as to the issuance of licenses as herein provided shall be effective thirty (30) days after the passage and approval of this act. In the event that during the said period of thirty (30) days, a duly verified petition in writing signed by not less than thirty-five per centum (35%) of the registered qualified electors of any county file with the board of county commissioners their protest against the issuance of any licenses as herein provided by the Montana liquor control board under the provisions of this act, then the said Montana liquor control board shall not issue any license or licenses within said county, except as herein provided.

The board of county commissioners must within five (5) days after the filing of said petition, meet and determine the sufficiency of the petition presented by ascertaining whether or not at least thirty-five per centum (35%) of the signers of said petition are registered electors of the territory or county affected. The board of county commissioners must within ten (10) days after the filing of such petition, if such petition be sufficient therefor make an order calling an election to be held within the county in the manner and at the places of holding an election for county offices in such county. Such election to be held on a day fixed by the board of county commissioners not more than thirty (30) days after the filing of such petition for the purpose of determining whether or not any license for the sale of spirituous liquors may be sold within the limits of the county as provided by the provisions of this act. [En. Sec. 30, Ch. 84, L. 1937.]

2815.197. Publication of election notice. The notice of election must be published once a week for four (4) weeks in such newspapers in the county where the election is to be held as the board of county commissioners may think proper. [En. Sec. 31, Ch. 84, L. 1937.]

2815.198. Form of ballots. The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of Alcoholic Beverages, Yes", "Sale of Alcoholic Beverages, No", and the elector in order to vote must mark an "X" opposite one of the answers. [En. Sec. 32, Ch. 84, L. 1937.]

2815.199. Polling places—conduct of election. The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state. [En. Sec. 33, Ch. 84, L. 1937.]

2815.200. Effect of election—penalty for violating local option—liquor store sales not affected. If a majority of the votes cast are "Sale of Alcoholic Beverages, Yes", the provisions of this act shall take effect immediately. If a majority of the votes cast are "Sale of Alcoholic Beverages, No", the board of county commissioners must publish the result once a week for four (4) successive weeks in the paper in which the notice of election was given, and at the expiration of the time of the publication of such notice all existing licenses shall be cancelled and it shall thereupon be unlawful to sell, either directly or indirectly, any liquor in such county under penalty of a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6)

months, or by both such fine and imprisonment; provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a state liquor store under the liquor control act. [En. Sec. 34, Ch. 84, L. 1937.]

2815.201. Election contests. Any election held under the provisions of the act may be contested in the same manner as provided by the general election laws. [En. Sec. 35, Ch. 84, L. 1937.]

2815.202. Restriction on holding subsequent elections. If no petition protesting against the issuance of licenses as herein provided be filed with the board of county commissioners within thirty (30) days after the passage and approval of this act, or if a majority of the votes cast at any election held in pursuance of the filing of said petition as herein provided, are "Sale of Alcoholic Beverages, No", then there shall not be submitted to the qualified electors of said county any other or further question as to the sale of alcoholic beverages within said county for a period of two (2) years from and after the date of the filing of said petition protesting the issuance of said license as herein provided with the board of county commissioners. [En. Sec. 36, Ch. 84, L. 1937.]

2815.203. Business in licensees' name—federal license required. No business shall be carried on under any license issued under this act except in the name of the licensee. No license shall be effective until a permit shall have been first secured under the laws of the United States if such a permit is necessary or is required under such law. [En. Sec. 37, Ch. 84, L. 1937.]

2815.204. Penalty for violations—revocation of license. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked. [En. Sec. 38, Ch. 84, L. 1937.]

2815.205. Saving clause. If any clause, sentence, paragraph, section or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act. This act shall apply to the Montana liquor control board as now composed and existing, and to any board or commission which may hereafter succeed the above said board. [En. Sec. 39, Ch. 84, L. 1937.]

CHAPTER 255-B, STATE TEMPERANCE COMMISSION

2815.206. State temperance commission established. That there shall be established in the state of Montana, a commission to be known as the state temperance commission, the same to be composed of the secretary of the bureau of child and animal protection, the superintendent of public instruction, and the secretary of the state board of health, all of whom shall serve ex-officio as members of such commission without additional compensation. [En. Sec. 1, Ch. 201, L. 1937.]

2815.207. President—place of business. The secretary of the bureau of child and animal protection shall be the president of such commission, and

its principal place of business shall be at the capitol building, in the City of Helena, Montana. [En. Sec. 2, Ch. 201, L. 1937.]

NOTE.—The sections of the Revised Codes of Montana of 1935 relating to the State Bureau of Child and Animal Protection were repealed by Sec. 1, Part VII, Chapter 82 of the Laws of 1937.

2815.208. Secretary—salary. The said commission shall be authorized, and is hereby empowered, to appoint and employ a secretary, who shall hold office at the pleasure of the board, and receive a salary of \$1,800.00 a year, to be paid from the fund hereinafter provided. [En. Sec. 3, Ch. 201, L. 1937.]

2815.209. Purpose of commission. It is hereby declared to be the purpose of the establishment of such commission, to prevent the intemperate use of alcoholic beverages in the state of Montana, and to disseminate information by newspaper advertising, by the distribution of literature, radio speeches, and lectures calculated to bring about temperance in the use of alcoholic liquors by the people of the state of Montana, and particularly intended to educate the minor children of the state with respect to the evils incident to the use of alcoholic stimulants, and the injury occasioned to the body and mind of individuals, and to society, incident to intemperance. [En. Sec. 4, Ch. 201, L. 1937.]

2815.210. Preventing use of liquor by minors—public policy. In the administration of this act, it is made the duty of the said commission to make such efforts and endeavor as may appear best calculated to prevent the sale of alcoholic liquors or alcoholic beverages to minors in violation of the law, and to prevent the use thereof by minors; it being hereby declared to be the public policy of this state that the use of alcoholic liquors by minors is injurious to both body and mind and detrimental to society, and that effective efforts should be made to enforce the law prohibiting the sale, or gift, of alcoholic liquors to minors. [En. Sec. 5, Ch. 201, L. 1937.]

2815.211. Cooperation with enforcement officers—investigations. Upon said temperance commission is conferred the power and it is made its duty to co-operate with and assist the attorney general, all county attorneys, sheriffs and peace officers in the rigid enforcement of all laws prohibiting the sale of liquor to minors and the punishment of offenders. It is vested with power and authority to make independent investigations of such law violations and to prefer charges in any court having jurisdiction against persons accused of violating the law, and it is hereby made the duty of county attorneys to prosecute all such charges by it preferred. [En. Sec. 6, Ch. 201, L. 1937.]

2815.212. Temperance commission fund. For efficiently carrying out the purpose of this act and enabling the said commission to administer the law in the interest of society, upon the liquor traffic is imposed the burden; and, therefore, there shall be, and is, hereby created a special state fund to be known and designated as the "temperance commission fund", the same to be derived wholly and exclusively by the setting aside from year to year of one per cent of the net profits obtained by the state of Montana in the sale of alcoholic liquors through the state liquor stores to an amount not to exceed five thousand dollars (\$5,000.00) in any one year, which fund shall be kept and held in the state treasury and be devoted exclusively for the purpose of administering this act, which must be computed by the

state liquor control board and by it paid to the state treasurer on the 31st day of December of each year. [En. Sec. 7, Ch. 201, L. 1937.]

2815.213. Administration of fund. Such fund shall be kept and carried on the books of the state treasurer of the State of Montana under the designation of "temperance commission fund", and all claims incurred by the commission or through its authority in the administration of this act, shall be paid solely and exclusively from such fund upon claims duly presented and approved by the state board of examiners. [En. Sec. 8, Ch. 201, L. 1937.]

2815.214. Appropriation—repayment. That there shall be and is hereby appropriated from moneys in the state treasury to the credit of the general fund, not otherwise appropriated, the sum of five thousand dollars in order to meet the expenses of the commission in organization and the administration of this act before funds are available in the state treasury to the credit of the "temperance commission fund"; and the said commission is hereby directed and required to pay back to the state treasury for credit of the general fund the amount of such appropriation so soon as funds in the state treasury to the credit of the "temperance commission fund" have accumulated in sufficient amount to permit without crippling the said commission in the administration of this act. [En. Sec. 9, Ch. 201, L. 1937.]

CHAPTER 255-C, BREWERS AND WHOLESALERS—TAX— REPORTS

2815.215. Failure to file return—penalty—tax lien—partial release. If any brewer subject to the payment of the tax provided for in subdivision (3) of section 2815.22 hereof or any wholesaler subject to the payment of the tax provided for in section 2815.29 hereof, shall fail, neglect or refuse to make any return required by Montana beer act, or shall fail to make payment of such tax within the time herein provided, the board shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure, wilful neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be in addition to the five per cent (5%) penalty hereinbefore provided for non-payment of such tax within the time hereinbefore provided. Said tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The board shall then proceed to collect such tax with penalties and interest. Upon request of the board it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of Montana beer act, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the

board of a duplicate copy of the statement so made by the board, or a certified copy of any return filed with said board, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the board shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the board may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the board, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest. [En. Sec. 3, Ch. 220, L. 1939.]

2815.216. Carriers' reports on imported beer. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact return to the board of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered. [En. Sec. 4, Ch. 220, L. 1939.]

CHAPTER 256, WORKMEN'S COMPENSATION ACT

2816. Name of act—what each part to contain.

It is the duty of the Industrial Accident Board, where after a corporation has enrolled under the Workmen's Compensation Act a successor takes over its business, to determine whether the latter is properly enrolled, and if not, see to it that notices displayed in its place of business that it is so enrolled are removed therefrom. *Miller v. Aetna Life Ins. Co.*, 101 M 212, 53 P 2d 704.

Id. The Workmen's Compensation Act was enacted for the benefit of the employee, and the act implies that the first duty of the Industrial Accident Board is to administer it so as to give the employee the greatest possible protection consistent with its purposes.

In an action for injuries, where defendant moved for judgment on the pleadings

on ground that plaintiff was prevented from maintaining the action by acceptance of the benefits under the Act, the court was required to assume that defendant owed a duty to plaintiff, that the duty was breached, and that a tort was committed which proximately resulted in the injuries sustained. *Sullivan v. N. P. R. R. Co.*, 24 F. S. 822.

References

Liest v. United States F. & G. Co., 100 M 152, 153, 48 P 2d 772; *State v. Holmes*, 100 M 256, 277, 47 P 2d 624; *State v. Industrial Acc. Board et al.*, 102 M 206, 210, 56 P 2d 1087; *Sullivan v. Roman Catholic Bishop et al.*, 103 M 117, 120, 61 P 2d 838; *Sample v. Murray Hospital*, 103 M 195, 201, 62 P 2d 241; *Koppang v. Sevier*, 106 M 79, 90, 75 P 2d 790.

2835. Attorney general legal adviser of board. The attorney general shall be the legal adviser of the board, and shall represent it in all proceedings whenever so requested by the board or any member thereof.

And it is further provided that the board may, in the investigation and defense of cases under plan three of the workmen's compensation act, employ such other attorney or legal adviser, as it deems necessary, and pay

for the same out of the industrial accident fund. [As amended Sec. 1, Ch. 162, L. 1937.]

2836. Defenses excluded in personal injury action—negligence of employee—fellow-servant—assumption of risk.

Held, that section 2836, Revised Codes, a part of the Workmen's Compensation Act, the effect of which is to deprive an employer of the so-called common-law defenses in an action by an employee in a hazardous occupation for personal injuries sustained in the course of his employment, applies not only to those employers who elect to come under the provisions of the Act, but also to those not so electing; the plaintiff in the latter case being, however, bound to prove that the injury for which he sues was caused by the employer's negligence. *Chancellor v. Hines Motor Supply Co.*, 104 M 603, 608 et seq., 69 P 2d 597.

Id. "Willful" negligence on the part of an employee suing his employer not protected by the Workmen's Compensation Act and which negligence the defendant employer may allege in defense under subdivision 1, section 2836, Revised Codes, is said to be the doing of an act recklessly while the doer thereof is conscious* that he is likely to be injured thereby or with a wanton and reckless disregard of the consequences, or in a conscious and deliberate violation of an accepted and reasonable rule; it embraces the doing of a thing deliberately and intentionally and with design and purpose.

2838. Employers not liable for death or injury other than herein defined—employees who elect not to come under law.

References

Chancellor v. Hines Motor Supply Co., 104 M 603, 609, 69 P 2d 597.

2839. Election of employer and employee to come under act—action against third party causing injury.

Held, that section 2839, Revised Codes, a part of the Workmen's Compensation Act, the widow of a highway flagman, who was struck by a passing automobile while in the discharge of his duties, was entitled to maintain an action for damages against the driver of the car not subject to the provisions of the Act, and that the action was not barred by the fact that plaintiff had received compensation for the death of her decedent as provided therein. *Kopang v. Sevier*, 103 M 234, 238 et seq., 53 P 2d 455.

Id. The Workmen's Compensation Act, including amendments, must be read together as a whole, and every provision and part thereof given proper and harmonious consideration, having in mind the legislative mandate that it shall be liberally construed; so construing it, held in connection with section 2839 and 2839.1, that it was clearly the intention of the legislature in passing said sections to insure to a workman coming within its provisions a cause of action against an independent tort-feasor through whose negligent act he was injured in the course of his employ-

ment, any damages so recovered being in supplement of the regular compensation awarded under the Act, subject to the provisions of said sections relative to the right of the employer or insurance carrier to be subrogated to a part of the gross amount so recovered.

Injury sustained by foreman of company which was employed by railroad to operate certain of railroad's coal docks, in stepping through hole in floor of pump house owned by railroad but controlled by company under its contract, was result of a cause "directly connected with his regular employment" within meaning of Act permitting recovery for injuries against a third party tort-feasor in addition to receiving compensation if cause of injury has no "direct connection with regular employment" so as to preclude foreman from recovering from railroad after accepting benefits from company under the Compensation act. *Sullivan v. N. P. R. R. Co.*, 24 F. 'S. 822.

References

Chisholm v. Vocational School et al., 103 M 503, 510, 64 P 2d 838.

2841. Employers engaged in hazardous industries—election. Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous", shall, on or before the first day of July, 1939, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, shall, on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed

by the board, and shall state whether such employer shall be bound by compensation plan number one, or compensation plan number two, or compensation plan number three, and a notice of such election, with the nature thereof shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election, except as hereinafter provided, for said first fiscal year and each succeeding fiscal year, provided, however, that such employer may at any time upon thirty days written notice to the insurer or the board, as the case may be, elect to be bound by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act. [As amended Sec. 1, Ch. 119, L. 1939.]

2843. Failure to elect—time for which election binds employer. [Repealed Sec. 2, Ch. 119, L. 1939.]

2862. Employer defined.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 217, 53 P 2d 704.

2863. "Employee" and "workman" defined.

References

Chisholm v. Vocational School et al., 103 M 503, 510, 64 P 2d 838.

2866. "Major dependent" defined.

A "dependent", within the meaning of the Workmen's Compensation Act, who seeks compensation upon the death of a workman is one who looked to him for support in some measure or to some extent; dependency does not depend on whether the claiming dependent could support himself without decedent's earnings or so reduce his expenses that he could do without such assistance, but whether he was in fact supported in whole or in part by the earnings of decedent under circumstances indicating an intent on the part of deceased to furnish such support, the need of claimant being more important than the extent of contributions theretofore made. Ross et al. v. Industrial Acc. Board, 106 M 486, 494, 80 P 2d 362.

Id. The father and mother—the former 55 years of age and the latter 50—of a workman killed in an industrial accident,

claimed compensation as major dependents. They were receiving \$35.00 a month from federal relief for their support and that of their three minor children, and claimed they needed \$100 per month for that purpose. While living at home until shortly before his death, the son's earnings as a beet worker had been collected by the father, and after leaving home he intermittently sent such sums of money as he could save. The father made affidavit that the federal relief was insufficient to support the family and that claimants were relying upon the support they expected to receive from decedent. Held, that an award of \$40 a month, made by the district court on appeal from an order of the Industrial Accident Board denying relief, during the period of dependency not exceeding 400 weeks, was not unwarranted.

2889. "Plant of the employer" includes what.

Injury sustained by foreman of company which was employed by railroad to operate certain of railroad's coal docks, in stepping through hole in floor of pump house owned by railroad but controlled by company under its contract, was result of a cause "directly connected with his regular employment" within meaning of Act permitting recovery for injuries against

a third party tort-feasor in addition to receiving compensation if cause of injury has no "direct connection with regular employment" so as to preclude foreman from recovering from railroad after accepting benefits from company under the Compensation Act. Sullivan v. N. P. R. R. Co., 24 F. S. 822.

2891. Compensation to children, brothers and sisters, and invalid children—when ceases. In computing compensation to children and to brothers

and sisters, only those under eighteen (18) years of age, except as herein-after provided, shall be included.

Orphan children or orphan brothers and sisters, under the age of twenty-one (21) years, and invalid children over the age of twenty-one (21) years shall also be included, and in case of invalid children, only during the period during which they are under that disability, all within the maximum limitations elsewhere in this act provided, after which payments on account of such person or persons shall cease.

Compensation to children, or brothers and sisters, except orphans and invalid children, shall cease when such persons reach the age of eighteen (18) years, and in all cases shall cease when such person marries; provided that for the purpose of determining the amount of compensation due to injured employees, as provided in sections 2912, 2913, 2914 and 2920 of the Revised Codes of Montana of 1935, no child or children, or brother or sister over the age of eighteen (18) years, except invalid children, shall be considered. An orphan as defined herein shall mean a child who is bereaved of both parents. [As amended Sec. 1, Ch. 53, L. 1937.]

2899. Claims must be presented within what time.

Where the only defect in a claim for compensation under the Workmen's Compensation Act, filed within the six-months period allowed by the statute, was the fact that it was not verified and it being returned to the claimant with the request that it be sworn to, the verified claim was not returned to the Industrial Accident Board until thirteen days after the expira-

tion of such period, the board held not justified in rejecting the claim as not filed within time, in view of the liberal construction of the Act required by it in terms, and the fact that the strict rules of pleading and practice should not be applied to such claims. *Chisholm v. Vocational School et al.*, 103 M 503, 507, 64 P 2d 838.

2900. Exception in case of minors and incompetents as to period of limitation and in case of workmen employed by school districts as to the time when the period of limitations shall begin to run. No limitation of time as provided in section 2899 or in chapter 256 of the political code of the state of Montana, Revised Codes, 1935, known as workmen's compensation act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under eighteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction in which event the period of limitations as provided for in section 2899, Revised Codes of Montana, 1935, shall begin to run on the date of appointment of such guardian, or when such minor arrives at the age of eighteen years, whichever date may be the earlier. The period of limitations as provided for in section 2899, Revised Codes of Montana, 1935, and any limitation of time for the filing of claims with the industrial accident board contained in chapter 256 of the political code of the state of Montana, Revised Codes, 1935, known as workmen's compensation act, shall not begin to run against any injured workman employed by any school district in the state of Montana until January 1, 1939. [As amended Sec. 1, Ch. 79, L. 1939.]

References

Kelly v. West Coast Const. Co. et al., 106 M 463, 464, 78 P 2d 1078.

2907. Contracts or agreements for hospital benefits, conditions governing.

A contract entered into between a mining company and a hospital for the hospitalization of its employees under the

Workmen's Compensation Act (secs. 2907 et seq., Rev. Codes), for the alleged breach of which the widow of a deceased em-

ployee, acting as administratrix of his estate, brought action against the hospital for wrongful refusal to receive him as a patient while suffering from pneumonia,

2910. Questions of law in certain actions.

Under section 2910, Revised Codes, declaring that in an action for damages connected with the treatment or care of a sick or injured employee, the question at issue shall be one of law for the trial court, held that where the damages sought were based upon an alleged wrongful re-

must be construed in the light of the intent and purpose of the Act which became a part of the contract. *Sample v. Murray Hospital*, 103 M 195, 197, 62 P 2d 241.

fusal of a hospital to receive a mining company's employee suffering from pneumonia, and who died four days after such refusal, the court committed error in submitting the issues to the jury. *Sample v. Murray Hospital*, 103 M 195, 201 et seq., 62 P 2d 241.

2911. Who liable for injuries under the different plans of act, and in what amounts.

The Workmen's Compensation Act provides for compensation only for injuries arising out of and in the course of claimant's employment, or, in case of death of the workman, where death is caused by such injuries, and the burden of establishing by a preponderance of the evidence that death in such case resulted from an accidental injury is upon the claimant. *Doty v. Industrial Accident Fund*, 102 M 511, 520, 59 P 2d 783.

The question for decision in a workman's compensation case based upon a claim for compensation for the death of a workman caused by lightning, is whether the accident arose out of and in the course of his employment, or whether by reason of his employment he was exposed to greater danger of being struck by lightning than others in the same locality who were not so

engaged, each case to be decided upon its own fact features. *Sullivan v. Roman Catholic Bishop et al.*, 103 M 117, 122, 61 P 2d 838.

Id. A laborer employed about a cemetery in removing rubbish was directed by his foreman to pick up a piece of galvanized metal pipe from seven to ten feet long and place it on an iron scrap pile and in performing this task was struck by lightning and killed; rain had been falling and the ground was damp; near by were trees, a pole and a wire fence. There was testimony that lightning struck more frequently in and about the cemetery than elsewhere in the vicinity. Held, that decedent's employment increased the danger of being struck by lightning and that his widow was entitled to compensation.

2912. Compensation for injury producing temporary total disability.

Under section 2912, Revised Codes, as amended by Chapter 177, Laws of 1929, providing for compensation of an injured workman for injury producing temporary total disability, where claimant has a wife and child under eighteen years of age, judgment awarding compensation at the

rate of \$18 per week for a total of 300 weeks held correct. *Best v. London Guarantee & Acc. Co.*, 100 M 332, 345, 47 P 2d 456.

References

Kelly v. West Coast Const. Co., et al., 106 M 463, 469, 78 P 2d 1078.

2915. Compensation for injury causing death.

References

Ross et al. v. Industrial Acc. Board, 106 M 486, 492, 80 P 2d 362.

2917. Medical and hospital services and such other treatment as approved by the board, to be furnished.

A physician at the request of the employer of an injured workman furnished medical treatment to the latter. The claim of the employee for compensation was settled between him and the insurance carrier with the approval of the Industrial Accident Board, such carrier having prior thereto paid the full amount of \$500 for surgical and hospital service provided for by section 14, Chapter 121, Laws 1925, amendatory of section 2917, Revised Codes. The physician not having been paid instituted a proceeding before the Industrial Accident Board against the insurance car-

rier to recover the amount of his claim. On appeal to the district court from an order of dismissal by the board, the appeal was dismissed. Held that the Industrial Accident Board on approving settlement of the employee's claim had exhausted its jurisdiction to its full extent, therefore had none to hear the proceeding, instituted by the physician, and hence dismissal thereof by the board and by the district court on appeal was correct; if plaintiff had any remedy, it was by an appropriate action in the courts. *Liest v. United States F. & G. Co.*, 100 M 152, 155, 48 P 2d 772.

2924. Compensation in case of changes in degree of injury.

Held, in a cause arising under the Workmen's Compensation Act, that where claimant after receipt of compensation for par-

tial disability made claim for determination of his case as a total permanent disability, and the board made a final al-

lowance, short of the maximum provided by the Act, thus treating the matter as finally ended, the district court on appeal in effect doing likewise, that both board and court erred in making the order final on a conjecture that the disability of claimant would cease at the close of the period for which compensation was allowed, in disregard of the provision of the Act vesting the board with continuing jurisdiction, so long as the maximum of

compensation allowable had not been reached, until the disability had ceased or had otherwise been changed. *Lunardello v. Republic Coal Co.*, 101 M 94, 98, 53 P 2d 87.

References

Meznarich v. Republic Coal Co., 101 M 78, 88 et seq., 53 P 2d 82; *Lunardello v. Republic Coal Co.*, 101 M 94, 98, 53 P 2d 87.

2926. Monthly payments converted into a lump sum.

While, under section 2926, Revised Codes, a compromise and settlement of a compensation claim is void without the approval of the Industrial Accident Board, the section has no application where no claim of the workman had been definitely established and there was no compromise between claimant and employer, but a re-

ceipt in full settlement of claimant's demand after he had fully recovered and returned to work had been executed by him, the board approving the transaction and declaring that claimant was entitled to what he had received and receipted for. *Shugg v. Anaconda Copper Min. Co.*, 100 M 159, 167, 46 P 2d 435.

2933. Notice of claims for injuries other than death.

The requirement of the Workmen's Compensation Act that a claimant for compensation must in his notice of injury received give the time and place where the accident occurred and the nature of the injury is not complied with by furnishing a doctor's certificate that claimant "was sick and unable to work from January 17th to February 9th, 1930." *State ex rel. Magelo v. Indus. Acc. Board*, 102 M 455, 462, 59 P 2d 785.

Id. Mere knowledge on the part of an employer that an employee (claimant for compensation under the Workmen's Com-

pensation Act) became sick while at work, or that he was "hurt," or the fact, as testified by claimant, that he had informed the foreman that he had a sore back, does not, in the absence of some knowledge on the part of the employer that some accidental injury was sustained by the employee, amount to actual knowledge of the injury, within the meaning of section 2933, Revised Codes.

References

Magelo v. Industrial Acc. Board, 103 M 477, 478, 64 P 2d 113.

2938. Hearings and investigations—technical rules.

The proceedings before the Industrial Accident Board in workmen's compensation cases are in nowise regulated by the provisions of the Code of Civil Procedure, which relate only to proceedings in courts, and under section 2938, Revised Codes, any informality in any proceeding before the board shall not invalidate any order or decision made by it. *State ex rel. Magelo v. Indus. Acc. Board*, 102 M 455, 461, 59 P 2d 785.

Under section 2938, Revised Codes, the Industrial Accident Board is not bound by the technical rules of evidence, and it may accept or reject hearsay in its discretion. *Ross et al. v. Industrial Acc. Board*, 106 M 486, 495, 80 P 2d 362.

References

Best v. London Guarantee & Acc. Co., 100 M 332, 340, 47 P 2d 456.

2939. Depositions may be taken.

References

Best v. London Guarantee & Acc. Co., 100 M 332, 340, 47 P 2d 456.

2940. Powers of board.

References

Liest v. United States F. & G. Co., 100 M 152, 156, 48 P 2d 772.

2945. Apportionment of costs and disbursements. The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan number three may be paid from the industrial accident fund, and in the discretion of the industrial accident board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or of-

ficers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the state of Montana. [As amended Sec. 2, Ch. 162, L. 1937.]

2947. Jurisdiction of board to hear disputes and controversies.

The Industrial Accident Board, vested with full power and jurisdiction to try and finally determine all matters respecting workmen's compensation, subject to review by the courts, is the trier of fact, its findings being equivalent to the verdict of a jury or the findings of the district court sitting without a jury, and where on appeal to the district court there is no additional evidence adduced, the re-examination of the case by it is a review and

not a trial de novo, and the decision of the board can be said that the evidence clearly preponderates against it. *Doty v. Industrial Accident Fund*, 102 M 511, 518, 59 P 2d 783.

References

Liest v. United States F. & G. Co., 100 M 152, 155, 48 P 2d 772; *Shugg v. Anaconda Copper Min. Co.*, 100 M 159, 168, 46 P 2d 435; *Meznarich v. Republic Coal Co.*, 101 M 78, 86, 53 P 2d 82.

2948. Presumption as to legality of rules, orders, findings, etc., of board.

References

Best v. London Guarantee & Acc. Co., 100 M 332, 340, 47 P 2d 456.
Meznarich v. Republic Coal Co., 101 M 78, 87, 53 P 2d 83.

2952. Jurisdiction to rescind or amend any order, decision, award, etc.

The board shall have continuing jurisdiction over all its orders, decisions, and awards, and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Provided, that the board shall not have power to rescind, alter, or amend any final settlement or award of compensation more than four (4) years after the same has been made, and provided further that the board shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards. [As amended Sec. 1, Ch. 67, L. 1937.]

Where a claimant for workmen's compensation more than two years after he had received payment in full for injuries sustained petitioned for a rehearing on the ground that this original claim and proof of injury did not conform to the facts, i. e., on an entirely new theory of the nature of injury suffered, the petition held to have been properly dismissed not only because of change of theory of the injury sustained, but also because under

this section as construed before amendment, the Industrial Accident Board is barred from altering a final settlement or award of compensation more than two years after it had been made. *Shugg v. Anaconda Copper Min. Co.*, 100 M 159, 167, 46 P 2d 435.

References

Meznarich v. Republic Coal Co., 101 M 78, 88, 53 P 2d 82; *Magelo v. Industrial Acc. Board*, 103 M 477, 478, 64 P 2d 113.

2953. Record of proceedings to be kept and testimony to be taken down

—attorneys fees. A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by the claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. [As amended Sec. 3, Ch. 162, L. 1937.]

2955. Application for rehearing.

Under section 2955, Revised Codes, providing for rehearings of an order or decision of the Industrial Accident Board in a workman's compensation case, challenging the jurisdiction of the board, the sufficiency of the evidence to support its findings or that the order or decision is unreasonable, etc., the moving party is in the same position as one moving for a new trial in the ordinary case, and his application relates only to the condition and situation prevailing at the time of the original hearing. *Shugg v. Anaconda Copper Min. Co.*, 100 M 159, 163 et seq., 46 P 2d 435.

Id. Where after an order made by the Industrial Accident Board there is a change in the condition of one claiming under the Workmen's Compensation Act, thus rendering the order inapplicable to his then existing condition, the board may review the matter, hear further evidence and modify the order, without regard to either the time provision of twenty days or

the grounds of rehearing specified in section 2955.

The fact that a claimant under the Workmen's Compensation Act in his petition for rehearing addressed to the Industrial Accident Board did not set forth, specifically what evidence he intended to introduce at such rehearing, or give his reasons why it had not been introduced at the original hearing (sec. 2955, Rev. Codes) was insufficient to deprive him, on appeal to the district court, of the right to introduce additional evidence, particularly where his petition for rehearing was prepared by the chairman of the board, in which all the grounds for rehearing provided for by the Act were set forth. *Best v. London Guarantee & Acc. Co.*, 100 M 332, 336, 47 P 2d 456.

References

State ex rel. Magelo v. Indus. Acc. Board, 102 M 455, 459, 59 P 2d 785.

2956. Board may at any time diminish or increase an award.

Under the provision of section 2956 Revised Codes, authorizing the Industrial Accident Board to increase compensation awarded a claimant where it appears that his disability has "increased", disability may be held to have "increased" where, though it has remained in a sense constant and unchanged, it is shown that it will

continue to the end for which the statute allows compensation. *Meznarich v. Republic Coal Co.*, 101 M 78, 88 et seq., 53 P 2d 82.

References

Shugg v. Anaconda Copper Min. Co., 100 M 159, 166, 46 P 2d 435.

2957. Application for rehearing—contents—rules of procedure.

Reference

Best v. London Guarantee & Acc. Co., 100 M 332, 336, 47 P 2d 456.

2959. Appeal to district court.

Reference

Meznarich v. Republic Coal Co., 101 M 78, 87, 53 P 2d 82.

2960. How appeal taken—notice—record—trial.

Where a compensation claimant was not represented by counsel at the hearing of his case before the Industrial Accident Board, and the evidence there produced was so incomplete and confusing with respect to the necessary facts to be considered in arriving at an intelligent conclusion and the board after denying compensation had refused a rehearing, the district court on appeal held not to have abused its discretion in permitting the introduction of additional testimony, although much thereof was repetitious resulting in effect in a trial *de novo*. *Tweedie v. Industrial Accident Board*, 101 M 256, 262, 53 P 2d 1145.

References

Shugg v. Anaconda Copper Min. Co., 100 M 159, 168, 46 P 2d 435; *Best v. London Guarantee & Acc. Co.*, 100 M 332, 338, 47 P 2d 456.

2931. Appearances—setting aside conclusions, orders, etc., of board—judgment and findings.

Where the Industrial Accident Board denied claimant for compensation a rehearing asked for on the ground, among others, of newly discovered evidence, resulting in an appeal to the district court where ad-

ditional evidence was properly admitted and judgment rendered in favor of claimant, the supreme court is not required, on the theory that claimant might well have presented his new evidence on the hearing

before the board, to order resubmission of the case to the board instead of affirming the judgment of the district court, the latter court on appeal being vested with authority under section 2961, Revised Codes, to render a proper judgment. *Tweedie v. Industrial Accident Board*, 101 M 256, 265, 53 P 2d 1145.

The district court, after hearing a workman's compensation case on appeal to it from the Industrial Accident Board, at

which hearing additional evidence was introduced, is not obliged to resubmit the case to the board for a ruling in the light of such additional evidence, since under section 2961, Revised Codes, the court has the power to modify or change the decision of the board or render any order or judgment that shall be legal or proper in the premises. *O'Neil v. Industrial Accident Board*, 107 M 176, 184, 81 P 2d 688.

2962. Appeals to supreme court.

References

Meznarich v. Republic Coal Co., 101 M 78, 87, 53 P 2d 82.

2964. Court to give liberal construction to act.

While in hearing and determining claims for compensation under the Workmen's Compensation Act the Industrial Accident Board performs judicial functions, strict rules of pleading and practice should not be applied, and the statute must be liberally construed, the claimant is required to comply with simple rules, particularly those relating to the time within which steps must be taken; "liberal construction" not going to the extent of permitting a court or the board to disregard the plain provisions of the statute. *Shugg v. Anaconda Copper Min. Co.*, 100 M 159, 169, 46 P 2d 435.

While the provisions of the Workmen's Compensation Act must be liberally construed, such construction is no justification for disregarding the plain provisions thereof relative to the time within which a petition for rehearing upon rejection of a claim by the Industrial Accident Board must be filed. *State ex rel. Magelo v. Indus. Acc. Board*, 102 M 455, 462, 59 P 2d 785.

While the Workmen's Compensation Act must be liberally construed, it does not contemplate that the employer shall be an

insurer of his employee at all times during his period of employment, nor is it founded on the theory of life insurance or a social insurance law. *Sullivan v. Roman Catholic Bishop et al.*, 103 M 117, 124, 61 P 2d 838.

Where the only defect in a claim for compensation under the Workmen's Compensation Act, filed within the six-months period allowed by the statute, was the fact that it was not verified, and, it being returned to the claimant with the request that it be sworn to, the verified claim was not returned to the Industrial Accident Board until thirteen days after the expiration of such period, the board held not justified in rejecting the claim as not filed within time, in view of the liberal construction of the Act required by it in terms, and the fact that the strict rules of pleading and practice should not be applied to such claims. *Chisholm v. Vocational School et al.*, 103 M 503, 507.

References

Meznarich v. Republic Coal Co., 101 M 78, 92, 53 P 2d 82; *Koppang v. Sevier*, 101 M 234, 245, 53 P 2d 455; *Tweedie v. Industrial Acc. Board*, 101 M 256, 263, 53 P 2d 1145.

2978. Employer electing plan No. 2 to insure his liability.

References

Best v. London Guarantee & Acc. Co., 100 M 332, 336, 47 P 2d 456; *Koski v. Murray Hospital et al.*, 102 M 109, 110, 56 P 2d 179.

2979. Duty of employer electing plan No. 2—amount of insurance necessary.

The provisions of section 2979, Revised Codes (Workmen's Compensation Act), prescribing the acts an employer electing to become subject to plan No. 2 must do, such as filing a written acceptance of its provisions with the board, the filing of policy, etc., held directory, not mandatory,

having nothing to do with the contract of the insurer imposing a liability running directly to the injured employee, and failure to perform them does not inure to the benefit of the insurer. *Miller v. Aetna Life Ins. Co.*, 101 M 212, 220 et seq., 53 P 2d 704.

2980. Policies to contain what.

Held, on application for writ of prohibition, that the Workmen's Compensation Act (secs. 2980, 2981 and 2989, Rev. Codes) in providing that the insurance carrier shall deposit securities with the treasurer of the Industrial Accident Board for the

purpose of satisfying valid claims for compensation in case the insurer should neglect or refuse to pay them, and authorizing the board to convert them into cash and apply the proceeds on their payment, has prescribed an exclusive and expeditious

method of collection, and that therefore execution against the property of the employer of the injured workman does not

lie. *State v. District Court et al.*, 102 M 350, 355, 57 P 2d 813.

2981. Agreement to be contained in policies of insurance—deposit of bonds.

Held, on application for writ of prohibition, that the Workmen's Compensation Act (secs. 2980, 2981 and 2989, Rev. Codes) in providing that the insurance carrier shall deposit securities with the treasurer of the Industrial Accident Board for the purpose of satisfying valid claims for compensation in case the insurer should neglect or refuse to pay them, and authorizing the board to convert them into cash

and apply the proceeds on their payment, has prescribed an exclusive and expeditious method of collection, and that therefore execution against the property of the employer of the injured workman does not lie. *State v. District Court et al.*, 102 M 350, 355, 57 P 2d 813.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 224, 53 P 2d 704.

2988. Policies to contain clause agreeing to do what—approval or change.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 224, 53 P 2d 704.

2989. Deposits under plan No. 2 as security.

Held, on application for writ of prohibition, that the Workmen's Compensation Act (secs. 2980, 2981 and 2989, Rev. Codes) in providing that the insurance carrier shall deposit securities with the treasurer of the Industrial Accident Board for the purpose of satisfying valid claims for compensation in case the insurer should neglect or refuse to pay them, and authoriz-

ing the board to convert them into cash and apply the proceeds on their payment, has prescribed an exclusive and expeditious method of collection, and that therefore execution against the property of the employer of the injured workman does not lie. *State v. District Court et al.*, 102 M 350, 355, 57 P 2d 813.

2990. What necessary in electing plan No. 3—percentage of pay-roll to be paid in under plan.

References

Ryan v. Industrial Accident Board, 100 M 143, 146, 45 P 2d 775.

3014. Jurisdiction and supervision of board over employment and places of employment.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 217, 53 P 2d 704.

3015. Powers of board regarding safety of employees.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 217, 53 P 2d 704.

3027. Board may summarily investigate places believed to be unsafe.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 217, 53 P 2d 704.

3028. Compliance with orders, directions, rules, etc., enjoined.

References

Miller v. Aetna Life Ins. Co., 101 M 212, 217, 53 P 2d 704.

CHAPTER 256-A, UNEMPLOYMENT COMPENSATION LAW

3033.1. Title of act. This act shall be known and may be cited as the "Unemployment Compensation Law." [En. Sec. 1, Ch. 137, L. 1937.]

3033.2. Declaration of public policy. As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the

unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [En. Sec. 2, Ch. 137, L. 1937.]

3033.3. Payment of benefits. Thirty (30) months after the date when contributions first accrue under this act from the employer, benefits shall become payable from the fund to any individual who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the railroad unemployment insurance act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions of this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the commission, in accordance with such rules and regulations as the commission may prescribe. [En. Subd. (a), Sec. 3, Ch. 137, L. 1937; Amd. Sec. 1 (a), Ch. 137, L. 1939.]

3033.4. Weekly benefit amount for total unemployment. Each eligible individual, who is totally unemployed (as defined in this act) in any week, shall be paid with respect to such week, benefits at the rate of four per cent (4%) of his total wages in employment for employers in the quarter of his base period wherein his earnings were highest, if a multiple of a dollar, or computed to the next higher multiple of a dollar, but not more than fifteen dollars (\$15.00) per week, nor less than five dollars (\$5.00) per week. [En. Subd. (b), Sec. 3, Ch. 137, L. 1937; Amd. Sec. 1 (b), Ch. 137, L. 1939.]

3033.5. Wage record. The commission shall maintain a record of the wages earned by an individual in accordance with wages earned by him for employment by employers during each quarter. [En. Subd. (c), Sec. 3, Ch. 137, L. 1937; Amd. Sec. 1 (c), Ch. 137, L. 1939.]

3033.6. Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed sixteen (16) times his weekly benefit amount. [En. Subd. (d), Sec. 3, Ch. 137, L. 1937; Amd. Sec. 1, (d), Ch. 137, L. 1939.]

3033.7. Eligibility for benefits. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the

commission may prescribe, except that the commission may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 3033.9 of this act.

(c) He is able to work, and is available for work.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of two (2) weeks. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (c) of this section;

(3) Unless it occurs within the thirteen (13) consecutive weeks preceding the week for which he claims benefits, provided that this requirement shall not interrupt the payments of benefits for consecutive weeks of unemployment; and provided further, that any individual who, prior to the first day of his benefit year, shall have accumulated such two (2) waiting period weeks, shall not be required to accumulate more than two (2) additional waiting period weeks during his ensuing benefit year.

(4) Unless it occurs after benefits first could become payable to any individual under this act.

(e) He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount. [En. Sec. 4, Ch. 137, L. 1937; Amd. Sec. 2, Ch. 137, L. 1939.]

3033.8. Disqualification for benefits. An individual shall be disqualified for benefits—

(a) If he has left work voluntarily without good cause, if so found by the commission, for a period of not less than one (1) or more than (5) weeks (in addition to and immediately following the waiting period), as determined by the commission according to the circumstances in each case.

(b) If he has been discharged for misconduct connected with his work, if so found by the commission, for a period of not less than the one (1) nor more than the nine (9) weeks (in addition to and immediately following the waiting period), as determined by the commission in each case according to the seriousness of the misconduct.

(c) If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the one nor more than the five weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his ex-

perience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state of Montana or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for temporary disability under the workmen's compensation law of any state or under a similar law of the United States, or

(3) Old age benefits under title II of the social security act, as amended, or similar payments under any act of congress, provided, that if such remuneration as referred to in (1), (2) and (3) of this subsection is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. [En. Sec. 5, Ch. 137, L. 1937.]

3033.9. Making claims—regulations. Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations

in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him. [En. Subd. (a), Sec. 6, Ch. 137, L. 1937.]

3033.10. Examination and disposition of claim—appeal. A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which shall make its decisions with respect thereto in accordance with the procedure prescribed in 3033.11, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 3033.8 (d), the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final decision of the commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid. [En. Subd. (b), Sec. 6, Ch. 137, L. 1937.]

3033.11. Disposal of appeal—further appeal. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to section 3033.14. [En. Subd. (c), Sec. 6, Ch. 137, L. 1937.]

3033.12. Appeal tribunals. To hear and decide disputed claims, the commission shall appoint such impartial appeal tribunals as are necessary for the proper administration of this act, consisting in each case of either a salaried examiner selected in accordance with section 3033.34, or a body

consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary expense. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present. [En. Subd. (d), Sec. 6, Ch. 137, L. 1937.]

3033.13. Commission review. The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard by a quorum thereof in accordance with the requirements in section 3033.11. The commission shall promptly notify the interested parties of its findings and decision. [En. Subd. (e), Sec. 6, Ch. 137, L. 1937.]

3033.14. Regulations to prescribe procedure on claims. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. [En. Subd. (f), Sec. 6, Ch. 137, L. 1937.]

3033.15. Witness fees. Witnesses subpoenaed pursuant to this act shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this act. [En. Subd. (g), Sec. 6, Ch. 137, L. 1937.]

3033.16. Appeal to courts. Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided by this act. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the commission and

has been designated by it for that purpose, or at the commission's request, by the attorney general. [En. Subd. (h), Sec. 6, Ch. 137, L. 1937.]

3033.17. Procedure on review by courts. Within ten days after the decision of the commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides against the commission for the review of its decision, in which action any other party to the proceeding before the commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commission shall forthwith mail one such copy to each such defendant. With its answer, the commission shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The commission may also in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order. [En. Subd. (i), Sec. 6, Ch. 137, L. 1937.]

3033.18. Payment of contributions. (1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amount to one-half cent or more, in which case it shall be increased to one cent. [En. Subd. (a), Sec. 7, Ch. 137, L. 1937; Amd. Sec. 3 (a), Ch. 137, L. 1939.]

3033.19. Rate of contributions. Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(a) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(b) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941, and for each calendar year thereafter. [En. Subd. (b), Sec. 7, Ch. 137, L. 1937; Amd. Sec. 3 (b), Ch. 137, L. 1939.]

3033.20. Study of merit rating—report. The commission shall investigate and study the operation of this act and the actual experience hereunder with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer or industry and would encourage the stabilization of employment. The commission shall submit their report and recommendations to the governor and the legislature not later than January 1, 1945. [En. Subd. (c), Sec. 7, Ch. 137, L. 1937; Amd. Sec. 3 (c), Ch. 137, L. 1939.]

3033.21. Employers included for entire year. Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year. [En. Subd. (a), Sec. 8, Ch. 137, L. 1937; Re-en. Sec. 4 (a), Ch. 137, L. 1939.]

3033.22. Employer may cease to be subject to act, when. Except as otherwise provided in section 3033.23 an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the commission prior to the last day of February, of such year, a written application for termination of coverage, and the commission finds that there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this act, and the total wages payable for employment by said employer in the preceding calendar year did not exceed \$500.00. For the purposes of this section, the two or more employing units mentioned in paragraph (2) or (3) of section 3033.58 (i) shall be treated as a single employing unit. [En. Subd. (b), Sec. 8, Ch. 137, L. 1937; Amd. Sec. 4 (b), Ch. 137, L. 1939.]

3033.23. Election to be subject to act. An employing unit not otherwise subject to this act, which files with the commission its written election to become an employer subject hereto for not less than two (2) calendar years, shall, with the written approval of such election by the commission become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1, of any calendar year, subsequent to such two (2) calendar years only if at least thirty (30) days prior to said first day of January it has filed with the commission a written notice to that effect.

Any employing unit for which services that do not constitute employment as defined in this act, are performed may file with the commission, a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two (2) calendar years. Upon the written approval of such

election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the commission a written notice to that effect. [En. Subd. (c), Sec. 8, Ch. 137, L. 1937; Re-en. Sec. 4 (c), Ch. 137, L. 1939.]

3033.24. Unemployment compensation fund—establishment. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, together with any interest thereon collected pursuant to section 3033.46; (2) all fines and penalties collected pursuant to the provisions of this act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided. [En. Subd. (a), Sec. 9, Ch. 137, L. 1937.]

3033.25. Accounts and deposit. The state treasurer shall be ex-officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 3033.49 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. [En. Subd. (b), Sec. 9, Ch. 137, L. 1937.]

3033.26. Withdrawals and use of money. Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the

payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 3033.26. [En. Subd. (c), Sec. 9, Ch. 137, L. 1937.]

3033.27. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal social security act is declared unconstitutional or in any way is inoperative, this act automatically becomes inoperative under the provisions of this act, and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment compensation fund and funds there held shall be immediately distributed, upon order of the commission, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of one (1) year it shall be paid to the general fund of the state of Montana. [En. Subd. (d), Sec. 9, Ch. 137, L. 1937.]

3033.28. Unemployment compensation commission—creation—compensation—terms. There is hereby created a commission to be known as the unemployment compensation commission of Montana. The commission shall consist of three members who shall be appointed by the governor on a non-partisan merit basis within sixty days after the passage of this act and after any vacancy occurs in its membership. Two of the members of the commission shall serve on a per diem basis and shall be paid at the rate of ten dollars (\$10.00) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one year for each of the said two members shall not exceed the sum of five hundred dollars (\$500.00). Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the member first taking office after the date of enactment of this act shall expire, as designated by the governor at the time of appointment, one at the end of three years, the other at the end of

six years. The third member of the commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission no member shall serve as an officer or committee member of any political-party organization. The governor may at any time, after notice and hearing, remove any commissioner for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. [En. Subd. (a), Sec. 10, Ch. 137, L. 1937.]

3033.29. Divisions to be established. The commission shall establish two coordinate divisions: The Montana state employment service division created pursuant to sections 3033.42 and 3033.43, and the unemployment compensation division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except insofar as the commission may find that such separation is impracticable. [En. Subd. (b), Sec. 10, Ch. 137, L. 1937.]

3033.30. Quorum. Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. [En. Subd. (c), Sec. 10, Ch. 137, L. 1937.]

3033.31. Duties and powers of commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the 1st day of February of each year, the commission shall submit to the governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the commission deem proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto. [En. Subd. (a), Sec. 11, Ch. 137, L. 1937.]

3033.32. Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of the state and publication in one or more news-

papers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission. [En. Subd. (b), Sec. 11, Ch. 137, L. 1937.]

3033.33. Publication of act, regulations and rules. The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general and special rules, its annual reports to the governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor. [En. Subd. (c), Sec. 11, Ch. 137, L. 1937.]

3033.34. Personnel. Subject to other provisions of this act, the commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The commission shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The commission shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause. [En. Subd. (d), Sec. 11, Ch. 137, L. 1937.]

3033.35. Records and reports. Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records shall be open to inspection and shall be subject to being copied by the commission or its authorized representative at any reasonable time and as often as may be necessary. The commission and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the commission deems necessary to the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall except to the extent necessary for the proper presentation of a claim be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the commission or appeal tribunal shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the

commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than 90 days, or both. [En. Subd. (e), Sec. 11, Ch. 137, L. 1937.]

3033.36. Oaths and witnesses. In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act. [En. Subd. (f), Sec. 11, Ch. 137, L. 1937.]

3033.37. Subpoenas—contempt—penalty for disobedience. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal, the commission or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the chairman of an appeal tribunal, a commissioner, the commission, or any duly authorized representative of any of them there to produce evidence if so ordered or there to give testimony touching the matters under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the commission, the chairman of an appeal tribunal or any duly authorized representative of any of them shall be punished by a fine of not more than \$200 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense. [En. Subd. (g), Sec. 11, Ch. 137, L. 1937.]

3033.38. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission, the chairman of an appeal tribunal or any duly authorized representative of any of them or in obedience to the subpoena of the commission or any member thereof or any duly authorized representative of the commission in any cause or proceeding before the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [En. Subd. (h), Sec. 11, Ch. 137, L. 1937.]

3033.39. State-federal cooperation. In the administration of this act, the commission shall cooperate to the fullest extent consistent with the provisions of this act, with the social security board, created by the social security act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the social security board may from time to time require, and shall comply with such provisions as the social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting in the administration of this act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act. [En. Subd. (i), Sec. 11, Ch. 137, L. 1937.]

3033.40. Reciprocal benefit arrangements. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund. [En. Subd. (j), Sec. 11, Ch. 137, L. 1937.]

3033.41. State employment service. The commission shall create a division to be known as the Montana state employment service which division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act, and for the purpose of performing such duties as are within the purview of the act of congress entitled: "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 [48 Stat. 113; U.S. C., Title 29, Sec. 49 (c)], as amended. The said division shall be administered by a full time salaried director, who shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The Montana state

employment service is hereby designated and constituted the agency of this state for the purpose of said act. The commission is directed to appoint the director, other officers, and employees of the Montana state employment service. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service. [En. Subd. (a), Sec. 12, Ch. 137, L. 1937.]

3033.42. Financing. All moneys received by this state under the said act of congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the Montana state employment service to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, the Montana state employment service is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account. [En. Subd. (b), Sec. 12, Ch. 137, L. 1937.]

3033.43. Unemployment compensation administration fund—creation—administration. There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board and the United States employment service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 9 of this act, shall be paid from the moneys in the unemployment compensation administration fund. [En. Subd. (a), Sec. 13, Ch. 137, L. 1937.]

3033.44. Employment service account. A special "employment service account" shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to sections 3033.42 and 3033.43 and for the purpose of cooperating with the United States employment service. There is hereby appropriated to the employment service account of the unemployment compensation administration fund, from any money in the state treasury not otherwise appropriated, for the period beginning July 1st,

1937, and ending June 30, 1938, the sum of \$13,021.26 and, for the period beginning July 1st, 1938, and ending June 30, 1939, the sum of \$13,021.26. In addition, there shall be paid into such account the moneys designated in section 3033.43, and such moneys as are apportioned for the purposes of this account from any moneys received by this state under Title III of the social security act, as amended. [En. Subd. (b), Sec. 13, Ch. 137, L. 1937.]

3033.45. Interest on past due contributions. Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1 per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this section shall be paid into the unemployment compensation fund. [En. Subd. (a), Sec. 14, Ch. 137, L. 1937; Re-en, Sec. 5 (a), Ch. 137, L. 1939.]

3033.46. Collection. If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state. [En. Subd. (b), Sec. 14, Ch. 137, L. 1937; Re-en. Sec. 5 (b), Ch. 137, L. 1939.]

3033.47. Priorities under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250.00 to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act, contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the bankruptcy act of June 22, 1938 (Chap. 575-52 Stat. 840.) [En. Subd. (c), Sec. 14, Ch. 137, L. 1937; Amd. Sec. 5 (c), Ch. 137, L. 1939.]

3033.48. Refunds. If not later than three (3) years after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the commission shall refund said amount, without interest, from the fund. For like cause and within the same period adjustment or refund may be so made on the commission's own initiative. [En. Subd. (d), Sec. 14, Ch. 137, L. 1937; Amd. Sec. 5 (d), Ch. 137, L. 1939.]

3033.49. Waiver of rights void. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by an individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not more than \$1,000 or be imprisoned for not more than six months, or both. [En. Subd. (a), Sec. 15, Ch. 137, L. 1937.]

3033.50. Limitation of fees—penalty for violations. No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the commission or its representatives or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than \$500, or imprisoned for not more than six months, or both. [En. Subd. (b), Sec. 15, Ch. 137, L. 1937.]

3033.51. No assignment of benefits; exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse, or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. [En. Subd. (c), Sec. 15, Ch. 137, L. 1937.]

3033.52. Falsity or wilful non-disclosure, penalty for. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than thirty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. [En. Subd. (a), Sec. 16, Ch. 137, L. 1937.]

3033.53. Violations by employer or agent, penalty for. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other

payment required from an employing unit under this act, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. [En. Subd. (b), Sec. 16, Ch. 137, L. 1937.]

3033.54. Penalty for violating act, rules or regulations. Any person who shall wilfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense. [En. Subd. (c), Sec. 16, Ch. 137, L. 1937.]

3033.55. Benefits wrongfully collected. Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions. [En. Subd. (d), Sec. 16, Ch. 137, L. 1937.]

3033.56. Representation in court—attorneys. (a) In any civil action to enforce the provisions of this act the commission and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or at the commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides. [En. Sec. 17, Ch. 137, L. 1937.]

3033.57. Non-liability of state. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums. [En. Sec. 18, Ch. 137, L. 1937.]

3033.58. Definition of terms. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll", means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll", means the average of the annual payrolls of an employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits", means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period", means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year", with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the date of filing of a valid claim by said individual, and thereafter the fifty-two consecutive-week period beginning with the date of the next valid claim filed after the termination of his last preceding benefit year.

(e) "Calendar quarter", means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

(f) "Commission", means the unemployment compensation commission established by this act.

(g) "Contributions", means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit", means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit which for some portion of a day in each of 20 different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); and whose total annual payroll within either the current or the preceding calendar year, exceeds the sum of five hundred dollars (\$500.00).

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act) and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under section 8, ceased to be an employer subject to this act; or

(5) For the effective period of its election pursuant to section 3033.23 any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside

of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(F) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(G) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States.

(II) Service with respect to which unemployment compensation is payable under and unemployment compensation system established by an act of congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner in section 3033.32 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this act.

(k) "Employment office", means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(l) "Fund", means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

(m) "Total unemployment";

(1) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(3) As used in this subsection the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is

in excess of five dollars (\$5.00) in any one week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than five dollars (\$5.00) per week is payable.

(n) "State" includes, in addition the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(o) "Week", means such period of seven consecutive calendar days, as the commission may by regulations prescribe.

(p) "Unemployment compensation administration fund", means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(q) "Wages", means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission.

(r) "Weekly benefit amount". An individual's "weekly benefit amount", means the amount of benefits he would be entitled to receive for one week of total unemployment. [En. Sec. 19, Ch. 137, L. 1937; Amd. Sec. 6, Ch. 137, L. 1939.]

3033.59. Act may be repealed or amended. The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this act at any time. [En. Sec. 20, Ch. 137, L. 1937.]

3033.60. Unconstitutionality of part, effect of. If any section, subsection, sentence, clause, or a phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared unconstitutional, the same being necessary to the welfare of the state of Montana, and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [En. Sec. 21, Ch. 137, L. 1937.]

3033.61. Effect of termination of inoperativeness of federal social security act. If title III or title IX of the "federal social security act" is declared unconstitutional, or in any way becomes inoperative, then this act shall terminate and cease and have no force and effect as of the date when said title or titles of said act is declared unconstitutional, or becomes inoperative. [En. Sec. 22, Ch. 137, L. 1937.]

3033.62. Approval by social security board required. If the federal social security board shall fail to approve this act, the same shall immediately terminate and have no force and effect. [En. Sec. 23, Ch. 137, L. 1937.]

3033.63. Transfer of funds from unemployment compensation trust fund to railroad unemployment insurance account—amounts. Notwithstanding

any requirements of section 9 (3033.24 to 3033.27) of the Montana unemployment compensation law (chapter 137 of the twenty-fifth legislative assembly, 1937), the unemployment compensation commission of Montana, shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from the unemployment compensation trust fund for the state of Montana, established and maintained pursuant to section 904 of the federal social security act, as amended, to the railroad unemployment insurance account established and maintained pursuant to section 10 of the railroad unemployment insurance act (52 Stat. 1094), an amount hereinafter referred to as the preliminary amount; and shall, prior to December 31, 1939, authorize and direct the secretary of the treasury of the United States to transfer from the Montana unemployment compensation trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The preliminary amount shall consist of that proportion of the balance in the employment compensation trust fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term employer is defined in section 1 (a) of the railroad unemployment insurance act) and credited to the Montana unemployment compensation trust fund bears to all contributions theretofore collected under this act and credited to such fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term employer is defined in section 1 (a) of the railroad unemployment insurance act) pursuant to the provisions of this act during the period from July 1, 1939, to December 31, 1939, inclusive. [En. Sec. 1, Ch. 167, L. 1939.]

3033.64. Agreements with railroad retirement board. The unemployment compensation commission of Montana is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance and use of Montana state employment service facilities, and to make available to the said railroad retirement board the records of the commission relating to employer's status and contributions received from employers covered by the railroad unemployment insurance act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the railroad unemployment insurance act, (52 Stat. 1094): that any monies received by the unemployment compensation commission of Montana from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance and use of Montana state employment service facilities, shall be paid into and credited the proper division of the unemployment compensation administration fund set up and established under section 13 (3033.43 and 3033.44) of the Montana unemployment compensation act. [En. Sec. 2, Ch. 167, L. 1939.]

CHAPTER 263, HOURS OF LABOR

3073.1. Hours of labor in retail stores—application of provisions.

Held, that the eight-hour law (secs. 3073.1-3073.3, Rev. Codes) taken as a whole, is not so indefinite as to be unen- forceable and is constitutional. State v. Safeway Stores, Inc., 106 M 182, 196 et seq., 76 P 2d 81.

3083.6. State cooperation to enforce federal fair labor standards act. The department of agriculture, labor and industry through the division of

labor and publicity, may, and it is hereby authorized to assist and cooperate with the wage and hour division, and the children's bureau, U. S. department of labor, in the enforcement within this state of the fair labor standards act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division, or said children's bureau, for the reasonable cost of such assistance and cooperation. [En. Sec. 1, Ch. 56, L. 1939.]

3083.7. Hours of labor in eating establishments. A period of not more than eight (8) hours shall constitute a day's work, and a period of not to exceed forty-eight (48) hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters and other commercial eating establishments.

The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters and other commercial eating establishments shall not be on duty more than eight (8) hours in the aggregate of any twelve (12) consecutive hours, such persons shall have at least twelve (12) consecutive hours off duty; provided, however, that the provisions of this act shall not apply to any person or persons working more than eight (8) hours during any twelve (12) consecutive hours, or more than forty-eight (48) hours during any week for the purpose of relieving another employee in case of sickness, or where the health of the public is imperilled, or where life and property is in imminent danger, or for other unforeseen cause or causes. [En. Sec. 1, Ch. 199, L. 1939.]

3083.8. Penalties. Any person, corporation, manager, agent or employer who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00), or by imprisonment in the county jail for not less than fifteen (15) days nor more than sixty (60) days, or by both such fine and imprisonment. [En. Sec. 2, Ch. 199, L. 1939.]

CHAPTER 264, PAYMENT OF WAGES—PROTECTION OF DISCHARGED EMPLOYEES

3084. Semi-monthly payment of wages.

Since Chapter 11, Laws of 1919 (secs. 3084-3089, Rev. Codes, 1921) fixing the time at which wages shall be payable, etc., excludes agricultural labor from the operation of the Act, the provision of section 3089 that where an employee is compelled to bring action for the recovery of wages due the judgment shall include a reasonable attorney's fee to be taxed as costs, does not apply in an action by a ranch-hand to recover his wages, and the district court properly eliminated such

item from plaintiff's cost bill. *Gahagan v. Gugler*, 100 M 599, 611, 52 P 2d 150.

Alleged error in striking from a cost bill in an action to recover wages under sections 3084 and 3089, Revised Codes, an item of attorney's fees, the order being made two months after entry of judgment, held properly reviewable on appeal from the judgment though the item was not incorporated therein. *Swanson v. Gnose*, 106 M 262, 268, 76 P 2d 643.

3085. Penalty for failure to pay at times specified in law.

References

Swanson v. Gnose, 106 M 262, 268, 76 P 2d 643.

3087. Period within which employee may recover penalties.**References**

Swanson v. Gnose, 106 M 262, 268, 76 P 2d 643.

3089. Judgment for wages shall include attorney's fees.

Since Chapter 11, Laws of 1919 (secs. 3084-3089, Rev. Codes, 1921) fixing the time at which wages shall be payable, etc., excludes agricultural labor from the operation of the Act, the provision of section 3089 that where an employee is compelled to bring action for the recovery of wages due the judgment shall include a reasonable attorney's fee to be taxed as costs, does not apply in an action by a ranch-hand to recover his wages, and the district court properly eliminated such item from plaintiff's cost bill. *Gahagan v. Gugler*, 100 M 599, 611, 52 P 2d 150.

Alleged error in striking from a cost bill in an action to recover wages under sections 3084 and 3089, Revised Codes, an item of attorney's fees, the order being made two months after entry of judgment, held properly reviewable on appeal from the judgment though the item was not incorporated therein. *Swanson v. Gnose*, 106 M 262, 265 et seq., 76 P 2d 643.

Id. A memorandum of costs, including an item of attorney's fees, in an action to recover wages due, and setting forth the nature of the services rendered, makes out a prima facie case upon which the claim for such fees is based (sec. 3089, Rev. Codes), and no further proof is required until such prima facie case is overturned.

Id. The provision of section 3089, Revised Codes, that the judgment in an action to recover wages shall include a reasonable attorney's fee in favor of the successful party, is an "express provi-

sion of law" for the allowance of costs.

Id. Contention of defendant administrator in an action to recover for work done at the request of defendant's decedent, that but for the fact that plaintiff presented his claim for a large amount, two-thirds of which had been paid (as found by the jury), instead of for the balance due which would have been allowed and the suit rendered unnecessary, and the fact that he had no other alternative than to pay it as presented, an allowance of an attorney's fee was not permissible under section 3089, Revised Codes, held not maintainable in the state of the record and in view of sections 10184, permitting an administrator to allow claims in part, and 10188, providing for reference of such a matter with the approval of the court or judge.

Id. The provision of section 3089, Revised Codes, to the effect that the judgment in an action to recover wages due shall include a reasonable attorney's fee in favor of the successful party, held unaffected, as to the matter of time within which the action must be brought, by the provision of section 3087 declaring that an employee may recover the penalties provided by section 3085 at any time within six months after default or delay in payment of wages; i. e., section 3089 applied to an action brought after expiration of six months; in the instant case the action was brought about three years after plaintiff's employment ceased.

CHAPTER 264-A, PROTECTION OF WAGE-EARNERS IN CERTAIN MINING OPERATIONS

3094.1. Labor wage and protection statutes applicable to certain mining operations. For the purposes of this act, all the provisions of Chapter 264, political code of the revised codes of Montana, 1935, shall extend to and govern every person, firm, partnership or corporation engaged in the business of extracting, or of extracting and refining or reducing metals and minerals, or mining for coal, or drilling for oil, save and except such persons, firms, partnerships or corporations as have a free and unencumbered title to not less than one-half ($\frac{1}{2}$) the fee of the property being worked; for this purpose outstanding unpaid or unredemed tax sale certificate shall not be considered an encumbrance. [En. Sec. 1, Ch. 39, L. 1939.]

3094.2. Statement to be filed with commissioner of labor and county clerks—contents. Every person, firm or partnership coming within the provisions of this act shall before commencing operations, file with the commissioner of labor of the state of Montana and also in the office of the county clerk and recorder of each county where such operations are to be carried on, a verified statement showing the names and addresses of each

party interested therein, or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation and the names and addresses of the person, or persons, resident of Montana, designated as the person, or persons, upon whom service of process may be made. [En. Sec. 2, Ch. 39, L. 1939.]

3094.3. Failure to file statement a misdemeanor. Every person, firm, partnership or corporation failing to file a statement with the commissioner of labor and in the offices of the county clerks and recorders, as provided in section 3094.2 shall be deemed guilty of a misdemeanor and punishable as provided by law. [En. Sec. 3, Ch. 39, L. 1939.]

3094.4. Actions against violators—duty of labor commissioner and of county attorneys. Whenever it shall appear from reliable information satisfactory to the commissioner of labor of the state of Montana that any person, firm, partnership or corporation engaged in the business mentioned in section 3094.1, and not exempt from the effect of this act, shall have failed to pay any wages or salaries due his employees as required by chapter 264 of the political code of the Revised Codes of Montana for 1935, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this act and said chapter 264. Should such complaint be filed by the county attorney upon his own motion, or at said request of said commissioner of labor, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees; provided, however, that any such employees may make complaint direct to the county attorney relative to any violation of this act or of said chapter 264. If said county attorney believes, after receiving said information, that the provisions of chapter 264 of the Revised Codes of Montana for 1935, or any thereof, have been violated, and that such violation or violations of said chapter was or were wilful, or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, it shall be his duty to file the complaint aforesaid in said district court. The county attorney of the county shall promptly notify the commissioner of labor of any complaint made by any employee relative to the violation of any of the provisions of this act or said chapter 264, and shall in writing keep said commissioner of labor advised of each step in any proceeding taken by said county attorney thereunder. Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer who shall have ten (10) days after such service to appear and defend such action. All proceedings upon such complaint shall be promptly prosecuted. [En. Sec. 4, Ch. 39, L. 1939.]

3094.5. Order of district court on hearing complaint. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within five (5) days all wages and salaries found by the court to be due and unpaid; or an order to appear before the court within ten (10) days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then

due and thereafter to accrue to his employees within said county. Service of such order shall be made at least five (5) days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown. [En. Sec. 5, Ch. 39, L. 1939.]

3094.6. Hearing—decree of court—bond, amount and requirement of
Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was wilful, or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries, or that the employer is a non-resident of the state of Montana without visible property in said county subject to execution, or who has within two (2) years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands, and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county, obligating the employer to pay all wages and salaries as required by said chapter 264. Said bond may be that of a surety company licensed and authorized to do business within the state of Montana, or of two (2) owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds. Said bond shall be in the sum of not less than five hundred dollars (\$500.00) for each unit of five (5) men or less employed by such person, firm, partnership, or corporation. Any person whose wages or salary has remained unpaid for fifteen (15) days or more after due, shall have a right to sue upon said bond for the recovery of his wages or salary. Said bond shall continue in force for one (1) year. Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon; provided, however, that nothing contained in this act shall be considered as requiring any person, firm, partnership or corporation to file a bond or bonds if he or it pays for all labor in full each day, or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor; provided, however, that nothing herein shall prohibit the making or entering into of any wage or working agreement, such as grubstake agreements and/or similar agreements; provided such employer or contractor keeps in force proper workmen's compensation insurance. [En. Sec. 6, Ch. 39, L. 1939.]

3094.7. Manner of serving process. All orders and other process provided for in this act shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served; service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a non-resident, or a corporation without officers or directors within the county, who cannot conveniently and promptly be found for service, then service upon the manager, superintendent or foreman in charge of the work, or, there being none such, then posting a copy of the order, or other process provided to be served herein, in a conspicuous place at or near

the entrance to the principal workings shall be deemed sufficient service. [En. Sec. 7, Ch. 39, L. 1939.]

3094.8. Enjoining of mining operations when bond not furnished. In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if he deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state of Montana, for a period of one (1) year, at any mine or reduction works, or oil well or until the order, judgment or decree of the court shall have been fully complied with. The said district court shall include in any order, judgment or decree against the employer, all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county. The county attorney of the county wherein such proceedings are had, or the attorney general of the state, shall, at his or their discretion, file such action and prosecute the same. [En. Sec. 8, Ch. 39, L. 1939.]

3094.9. Failure to furnish bond or pay costs as contempt. In event the employer fails for thirty (30) days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court. [En. Sec. 9, Ch. 39, L. 1939.]

3094.10. Court may order publication of notice of bond requirement. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county, of the entry of the order against the employer, requiring said employer to furnish said bond, said publication shall be for four (4) consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding. [En. Sec. 10, Ch. 39, L. 1939.]

3094.11. Attorney fee allowed, when. In event any person whose wages or salary has remained unpaid for fifteen (15) days or more after due, shall bring suit as in section 3094.6 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney fee. [En. Sec. 11, Ch. 39, L. 1939.]

3094.12. Review by supreme court. In event any employer against whom an order to furnish the bond described in this act feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari. [En. Sec. 12, Ch. 39, L. 1939.]

3094.13. Remedy provided is in addition to existing remedies. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof, shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries. [En. Sec. 13, Ch. 39, L. 1939.]

CHAPTER 267, MEDICINE—REGULATION OF PRACTICE

3122. Practicing medicine without certificate—penalties.

Held, on application for writ of super- was charged with practicing medicine and
visory control, that where an osteopath surgery without a license, whether the

prosecution be had under section 3122 or section 3130 Revised Codes, the case falls within the exclusive jurisdiction of the district court, and not within that of the justice of the peace, in both instances the

penalty prescribed (a fine not exceeding \$1,000 and imprisonment not exceeding one year) being greater than justice courts may impose. State v. District Court et al., 105 M 77, 78 et seq., 69 P 2d 748.

CHAPTER 268, OSTEOPATHY—REGULATION OF PRACTICE

3130. Certificate does not authorize the practice of major or operative surgery.

Held, on application for writ of supervisory control, that where an osteopath was charged with practicing medicine and surgery without a license, whether the prosecution be had under section 3122 or section 3130, Revised Codes, the case falls within the exclusive jurisdiction of the

district court, and not within that of the justice of the peace, in both instances the penalty prescribed (a fine not exceeding \$1,000 and imprisonment not exceeding one year) being greater than justice courts may impose. State v. District Court et al., 105 M 77, 79, 69 P 2d 748.

3132. Practice of osteopathy without license prohibited.

Reference

State v. District Court et al., 105 M 77, 82, 69 P 2d 748.

CHAPTER 268-A, PHOTOGRAPHY—REGULATION OF PRACTICE

3137.1. Photography defined. (a) Photography is defined to be:

1. The production of pictures by the action of light on prepared sensitive surfaces;

2. The processes of projecting and registering images by means of lens and camera upon sensitized materials, development and fixation of the latent image to render same visible and permanent, and the subsequent reproduction or transfer of such image, either negative or positive, upon other sensitized material by aid of light and chemical action.

(b) The practice of photography is defined to be the business or profession, occupation or avocation of taking or producing photographs, or any part thereof, for hire. [En. Sec. 1, Ch. 37, L. 1937.]

3137.2. Creation of board. The board of examiners in photography is hereby created. Said board shall consist of five (5) members, to be appointed by the governor. Each of said members shall have been engaged in the practice of photography in the state for not less than five (5) years next preceding his appointment. The terms of the members first appointed shall be, one (1) for five (5) years; one (1) for four (4) years; one (1) for three (3) years; one (1) for two (2) years; and one (1) for one (1) year. Thereafter the term of each member shall be for five (5) years. [En. Sec. 2, Ch. 37, L. 1937.]

3137.3. Organization; duties of officers; meetings; compensation.

(a) Within thirty (30) days after the appointment of the members thereof, the board shall organize by electing one (1) of its members as president, one (1) as vice-president, and one (1) as secretary and treasurer. The board shall make such rules and regulations as may be necessary to the performance of its duties. A majority of the board shall constitute a quorum.

(b) It shall be the duty of the president to preside at all meetings. In the absence or incapacity of the president, the vice-president shall assume his duties. It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the board, which shall be open at all times to public inspection. He shall have custody of all funds and shall hold, use or ex-

pend such funds only in the manner hereinafter provided. He shall give such surety bond as the board shall from time to time prescribe, in not less than double the amount of money he would hold at any one time, and the premium shall be a charge against the board.

(c) The board shall hold public meetings at least once each year and as often and at such places as it may deem necessary.

(d) Each member of the board shall receive as compensation five dollars (\$5.00) for each day actually in session or actively engaged in the duties of the board or of his office, and actual necessary traveling expenses and hotel bills when in session. In addition, the secretary-treasurer shall be allowed an annual expense account not to exceed one hundred dollars (\$100.00) for stenographic assistance.

(e) The secretary-treasurer shall transmit to the state treasurer all fees or other revenue received by the board. The state treasurer shall place ten per cent (10%) thereof in the general fund to assist in defraying the cost of the maintenance of the state government, and shall place the remainder in a separate fund to be known as "The Photographers' License Fund", to be used only in defraying the expenses of the board and in the prosecution of violations of this act. Any other provision of law notwithstanding, the unexpended balance remaining in said photographers' license fund as of the end of the fiscal year shall not revert to the general fund but shall be credited to said fund for the succeeding fiscal year. The board shall never incur any expense nor approve any claim against said fund in excess of the balance therein, nor shall the state auditor issue any warrant against said fund in excess of said balance. [En. Sec. 3, Ch. 37, L. 1937.]

3137.4. Authority to give examinations; certificates and licenses.

(a) The board shall have authority to examine applicants who desire to practice photography in the state; to collect fees for such examinations, and to issue certificates of registration and license to practice photography to such as qualify as to competency, ability and integrity. The board shall adopt rules for the issuance of temporary certificates pending an examination, which shall be null and void after the next ensuing examination by the board. For the advancement of the profession, the board shall also provide for temporary certificates to apprentices.

(b) In giving examinations, the board may take testimony, under oath, which may be administered by any member, as to technical qualifications or the business record of the applicant, and the board may, at its discretion, for sufficient reason, grant or withhold a license to practice. [En. Sec. 4, Ch. 37, L. 1937.]

3137.5. Forms of technical examinations. The board shall provide three forms of technical examinations, covering respectively portrait, commercial work, and kodak or amateur finishing, and shall provide separate certificates for each such branch of photography. A certificate for any one branch shall not permit practice of the other branches, but a person may hold certificates in all three branches. An applicant may take the examination in one or more such branches of photography, and if taken at the same meeting of the board, one examination fee shall suffice. [En. Sec. 5, Ch. 37, L. 1937.]

3137.6. Reports; removal of member. (a) The board shall make an annual report of its proceedings to the governor, not later than the fifteenth

(15th) day of December of each year, which report shall contain an account of all moneys received and disbursed, from what source received, and for what purpose paid out.

(b) After a full and complete hearing of charges, the governor, on a majority vote of the remaining members and himself, may remove any member of the board for continued neglect of duty, incompetency, or unlawful or dishonorable conduct. [En. Sec. 6, Ch. 37, L. 1937.]

3137.7. Examinations; fees; licenses. (a) Every person desiring to commence the practice of photography in this state after this act takes effect, shall file an application, under his true name, for a license to so practice, together with an examination fee of twenty-five dollars (\$25.00), with the secretary of the board. He shall appear before the board for examination within six (6) months, and present such references and credentials as the board may require, and shall give satisfactory evidence as to competency and fitness to practice photography, based on technical knowledge and business integrity.

(b) If the applicant successfully passes the examination, he shall be registered by the board as a qualified photographer and receive a license signed by each member, authorizing him to practice photography. Such license shall not be transferable.

(c) No company, firm, corporation or association shall practice photography under an assumed or fictitious name, unless the name of the concern, together with the name of each person working under such name, or in any way associated with such concern who shall in all cases be a resident of Montana, shall be prominently and continuously displayed in the place of business of such concern. Said sign shall be conspicuously printed in plain type in the English language, on a card not less than twelve (12) by fourteen (14) inches, and shall be framed under glass.

(d) Fees paid for examinations shall in no case be refunded, but an applicant who fails in the first examination may take a subsequent examination in branches in which he failed, and the fee for such re-examination shall be ten dollars (\$10.00). Should the applicant again fail, and desire to again come before the board for a third examination, he may make application as in the first instance, accompanied by the regular examination fee of twenty-five dollars (\$25.00). [En. Sec. 7, Ch. 37, L. 1937.]

3137.8. License to be recorded. Each recipient of a license to practice photography shall record the same in the office of the county recorder of the county in which he practices photography, and shall keep such license conspicuously displayed in his camera room. [En. Sec. 8, Ch. 37, L. 1937.]

3137.9. Fees. (a) Every person licensed to practice photography, who maintains an established place of photographic business, and who is not merely an employee of an established business, shall pay an annual fee of five dollars (\$5.00) for an establishment license.

(b) Every person licensed to practice photography, who is an employee of an established photographic business, shall pay an annual license fee as follows:

1. If employed in the portrait or commercial branch of photography, three dollars (\$3.00);
2. If employed in kodak or amateur finishing, two dollars (\$2.00).

(c) All fees shall be paid to the secretary on or before July first (1st), and he shall give a receipt for the same.

(d) The annual establishment fee shall include the issuance of certificates covering portrait, commercial, and kodak or amateur finishing when issued to the same person, provided he is qualified to hold the same. The annual employee fee shall cover issuance of all three certificates if applicant is qualified to hold same.

(e) The secretary shall notify every licensee, at his last known address, that his license fee is due on July first (1st) of each year after this act takes effect, and that his license will be revoked unless said fee is paid in full on or before October first (1st) of the same year, and thirty (30) days prior to said date shall send a second notice to all who have failed to make payment.

(f) A photographer whose license is revoked for non-payment of the annual fee may make application to the secretary for reinstatement, accompanied by a fee of ten dollars (\$10.00), and if the board shall find the applicant to be guilty of no violation of this act other than default in payment of annual dues, he may be immediately reinstated. [En. Sec. 9, Ch. 37, L. 1937.]

3137.10. Revocation of license. The board shall have power to revoke the license of any photographer found guilty of fraudulent practices, or of willful misrepresentations, or for professional inactivity within the state for a period of one (1) year, unless given further time by the board, or who is convicted of a crime involving moral turpitude. Before any license shall be so revoked, the licensee shall be given notice in writing, mailed to his last known address, advising him of the charges, and at a date and place specified in said notice, not less than ten (10) days after service thereof, he shall be given a public hearing, and shall have the right to be represented by counsel and to present testimony in his behalf. In the conduct of any such hearing the board shall be governed by the usual rules of evidence, and all testimony shall be taken and a record of the hearing made and filed with the secretary of the board. [En. Sec. 10, Ch. 37, L. 1937.]

3137.11. Photographers practicing at time act takes effect. The board shall issue a license certificate to every photographer lawfully engaged in the practice of photography in the state, at the time this act takes effect, upon receipt of an application accompanied by the fee prescribed by section 3137.9, which fee shall be deemed to be payment in full to July first (1st), 1938. Engagement in the lawful practice of photography shall be proven by the possession of a city license, issued prior to the date of passage of this act, in cities requiring city licenses, or in localities where city licenses are not required, by an affidavit signed by at least five (5) taxpayers, declaring the applicant to be engaged in the lawful practice of photography for profit, and permanently located. A resident photographer so entitled to a certificate shall make application therefor, accompanied by the proper fee, within thirty (30) days after notification by the secretary. Failure to do so shall act to forfeit the right to a certificate without examination. [En. Sec. 11, Ch. 37, L. 1937.]

3137.12. Unlawful to practice without license. (a) From and after thirty (30) days following the organization of the board, and notification by the board of the requirements of this act with respect to the filing of

application for license, it shall be unlawful for any person or firm not licensed as prescribed herein to practice photography, either directly or indirectly, or by agent or employee, or for any person representing himself to be qualified to practice photography in the state.

(b) A person shall be regarded as practicing photography who is a manager, proprietor or conductor of a place in which photographs are made and offered for sale. [En. Sec. 12, Ch. 37, L. 1937.]

3137.13. Misdemeanor to practice photography without license. Any person who shall practice, or attempt to practice, photography in the state, without first having complied with the provisions of this act, or who shall violate any provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine for each offense, of not less than fifty (50) nor more than two hundred (200) dollars, or by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Each sale shall be a separate offense. [En. Sec. 13, Ch. 37, L. 1937.]

3137.14. Exemptions. Nothing in this act shall be construed to apply:

(a) To a person in the employ of any newspaper or periodical publication, provided the negatives or photographs made by such person are not sold or offered for sale, or otherwise disposed of in this state for profit;

(b) To a person who shall make negatives or photographs for experimental purposes or for his or her own personal use or pleasure, provided such negatives or photographs are not sold or offered for sale in this state;

(c) Nor to a person who is in the employ of any school, college, or institution maintained by the state of Montana, who shall make negatives or any reproduction therefrom solely for the use of said school, college or institution, for educational or scientific purposes;

(d) To a licensed physician or dental practitioner who shall make negatives or photographs for clinical purposes;

(e) To motion picture operators in making motion pictures;

(f) To X-ray, blue print, photostatic or motion picture operators. [En. Sec. 14, Ch. 37, L. 1937.]

3137.15. Saving clause. If any part or provision of this act shall for any reason be adjudged by a court of competent jurisdiction to be invalid, the remainder thereof shall not thereby be invalidated, impaired, or affected. [En. Sec. 15, Ch. 37, L. 1937.]

CHAPTER 270, PODIATRY—REGULATION OF PRACTICE

3154.1. Definitions. Chiropody (sometimes called podiatry) shall, for the purpose of this act, mean the diagnosis, medical, surgical, mechanical, manipulative and electrical treatment of ailments of the human foot. A chiropodist shall mean one practicing chiropody. [As amended Sec. 1, Ch. 218, L. 1939.]

3154.2. License—amputations not allowed. It shall be unlawful for any person to profess to be a chiropodist, to practice or assume the duties incident to chiropody, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in any sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term or terms, letters indicating to the public that they are holding themselves

out as a chiropodist, or foot correctionist in any manner as defined in this act, without first obtaining from the state board of chiropody medical examiners a license authorizing the practice of chiropody in this state, except as hereinafter provided. No chiropodist shall amputate the human foot or toe or toes, or administer any anesthetic other than local. [As amended Sec. 2, Ch. 218, L. 1939.]

3154.3. Chiropody examiners—examinations—qualifications—schools—fees—non-resident practitioners. There is hereby created a state board of chiropody medical examiners consisting of one physician to be selected at its annual meeting by the state board of medical examiners from its membership, the secretary of the state board of medical examiners, and two chiropodists to be selected and to serve as hereinafter provided. The Montana association of chiropodists shall select six chiropodists from its membership, who shall be residents of and shall have engaged in the active practice of chiropody for at least two years in this state, and shall be of high integrity and ability. Within thirty days from and after the selection of said six chiropodists as aforesaid, the governor of Montana shall appoint three of their number and so designate the term of office of each, that the term of office of one member shall expire in one (1) year, one in two (2) years, and one in three (3) years, from date of appointment; annually thereafter, the governor shall appoint one member who shall be a licensed chiropodist possessing the qualifications hereinbefore mentioned who shall serve for a period of three (3) years or until his successor shall have been appointed by the governor. Should any vacancy arise on aforesaid board before the expiration of the term of office of any of the chiropodist members of said board, such vacancy shall be filled by appointment by the governor within thirty days, such appointee to possess the qualifications heretofore stated, and to be selected from those remaining of the said six chiropodists theretofore selected by the Montana association of chiropodists unless said number of selected chiropodists shall have been exhausted. Examinations shall be held semi-annually at such places and time as the state board of chiropody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiropody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiropody. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiropody recognized as being in good standing by the Montana board of chiropody medical examiners, but after June 1st, 1941, no school of chiropody shall be accredited by said board which does not require for graduation four years of instruction in the study of chiropody. However, all chiropodists, actively engaged in the practice of chiropody one or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiropody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiropodists of other states maintaining equal statutory requirements for the practice

of chiropody and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50.00) to the state medical board fund. [As amended Sec. 3, Ch. 218, L. 1939.]

3154.4. Examination—fees. From and after the passage and approval of this act, any person not exempt from examination under section 3154.3 and desiring a license to practice chiropody shall be examined in the following subjects: Anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic chiropody, histology, bacteriology, pharmacy, neurology, surgery (minor), chiropody, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene, and sanitation, ethics and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license shall be a general average of seventy-five per cent (75%) in all the subjects involved, and not less than fifty per cent (50%) in any one subject. An examination and license fee of thirty-five dollars (\$35.00) shall be paid to the secretary of the state board of medical examiners. Any applicant failing in the examination and being refused a license shall be entitled within six months of such refusal to a re-examination, but one such re-examination shall exhaust his privilege under the original examination. [As amended Sec. 4, Ch. 218, L. 1939.]

3154.5. Designation of licensees—renewals—re-issuance of license—display of license required—recording necessary. Every license issued hereunder shall be designated as “registered chiropodist’s license” and shall not contain any abbreviations thereof, nor any other designation nor title except that a statement of limitation shall be contained in said license referring to the licensee as “registered chiropodist—practice limited to foot”, so as not to mislead the public in regard to their right to treat other portions of the body. All licenses shall be recorded by the secretary of the state board of medical examiners in the manner of other medical licenses; the person receiving such license shall have it recorded in the office of the county clerk in the county in which he or she resides, and the record shall be indorsed thereon. In case the person so licensed shall remove to another county to practice, the holder shall record the license in a like manner in the county into which he or she removed, and the county clerk is entitled to charge and receive the usual fee for making such record. A renewal license fee of three dollars (\$3.00) shall be paid annually on July 1st of each year, and if not paid within three months thereafter, the license shall be revoked and shall be re-issued only upon original application and payment of a fee of thirty-five dollars (\$35.00). All licenses shall be conspicuously displayed by said chiropodists at their offices or other places of practice. [As amended Sec. 5, Ch. 218, L. 1939.]

3154.6. Refusal or revocation of license. The state board of chiropody medical examiners may, after due hearing, refuse to grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for any illegal

purpose, but said board may re-issue a license after a lapse of six months, if in its judgment such act or acts, conditions and/or conditions of disqualification shall have been remedied. [As amended Sec. 6, Ch. 218, L. 1939.]

3154.10. Application of act. This act shall not apply to any physician licensed to practice his profession in this state, nor to surgeons of the United States army, navy and/or United States public health service, when in actual performance of their duties. [As amended Sec. 7, Ch. 218, L. 1939.]

3154.11. Corrective shoes or appliances. Nothing in this act shall be construed as prohibiting the fitting, recommending, advertising, adjusting or the sale of corrective shoes, arch support, or similar mechanical appliances or foot remedies by retail dealers or manufacturers. [As amended Sec. 8, Ch. 218, L. 1939.]

CHAPTER 271, OPTOMETRY—REGULATION OF PRACTICE

3156. Provisions regulating practice of optometry. It shall be unlawful for any person:

Subdivision 1. To practice optometry in the state of Montana unless he shall first have obtained a certificate of registration, in the manner hereinafter provided, and filed the same or a certified copy thereof with the county clerk and recorder of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; or

Subdivision 2. To sell or barter, or offer to sell or barter any certificate of registration issued by the state board of optometry; or

Subdivision 3. To purchase or procure by barter any such certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or

Subdivision 4. To alter with fraudulent intent in any material regard such certificate of registration; or

Subdivision 5. To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or

Subdivision 6. To practice optometry under a false or assumed name; or

Subdivision 7. To wilfully make any false statement in a material regard in any application for an examination before the state board of optometry or for a certificate of registration; or

Subdivision 8. To advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time of so doing a valid unrevoked certificate of registration; or

Subdivision 9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work upon such lenses; or

Subdivision 10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any

person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eye glasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be deemed to be practicing optometry within the meaning thereof; provided, that nothing in this section shall apply to the prescriptions of qualified optometrists or oculists when sent to a recognized optical house.

Subdivision 11. To advertise at a price, or any stated terms of such a price, or as being free, any of the following: The examination or treatment of the eyes; the furnishing of optometrical services, or the furnishing of a lens, lenses, glasses, or the frames or fitting thereof.

The provision of this subdivision does not apply to the advertising of goggles, sun-glasses, colored glasses, or occupational eye protective devices, provided the same are so made as not to have refractive values and are not advertised in connection with the practice of optometry or of any professional service. [As amended Sec. 1, Ch. 130, L. 1939.]

3157. Examiners in optometry. A board is hereby created to be known as the Montana state board of examiners in optometry, hereinafter designated the board of examiners, which shall consist of three members appointed by the governor. The board shall have power to make rules and regulations for the conduct, business and procedure of the board and for the regulation, conduct, supervision and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this act. No person shall be eligible to appointment who is not a registered optometrist of the state of Montana and actually engaged in the exclusive practice of optometry in the state of Montana during the term of his office. Each of the members shall hold office for a term of six years or until his successor is appointed and qualified and shall be so classified that one member of said board shall retire every two years. The present members of the Montana state board of examiners in optometry shall continue to serve and act as members of the state board of optometry, but under the provisions of this act, during their respective terms or until their successors are appointed and qualified. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, which shall be administered by the secretary of state, and filed in his office; and said board shall have a common seal. Appointments to fill vacancies caused by death, resignation or removal shall be made for the residue of such term by the governor. [As amended Sec. 2, Ch. 130, L. 1939.]

3159. Examinations—admission to practice—non-residents. Subdivision 1. The board of examiners shall make rules and regulations relative to and governing the qualifications of all applicants for certificates of registration as optometrists not inconsistent with the provisions of this act and if the applicant does not meet the requirements of such rules and regulations then the applicant will not be eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of such rules and regulations said applicant before beginning to practice optometry in this state must pass an examination given by and conducted before said board of examiners. All examinations shall be practical in character and designated to ascertain the applicant's fitness to practice the profession of

optometry and shall be conducted in the English language. The board shall, from time to time, publish and distribute the examination requirements for a certificate to practice optometry in the state of Montana.

Subdivision 2. No person shall be eligible to take said examination who is not 21 years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

Subdivision 3. On and after July 1st, 1925, no person shall be eligible to take said examination unless he shall have certificates of graduation from an accredited high school and from a school of optometry wherein the practice and science of optometry is taught in a course of study covering eight semesters, or four years, of actual attendance and which school has a recognized standing with the international association of boards of examiners in optometry. In lieu of said certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six years in some other state or states.

Subdivision 4. Every person desiring to be examined in optometry shall file an application in the manner prescribed by said board at least four weeks before the examination shall be held, and a fee of twenty-five dollars (\$25.00) shall accompany said application.

Subdivision 5. Every person successfully passing said examination shall be registered in the board register, which shall be kept by the secretary of said board, and upon the payment of a fee of ten dollars (\$10.00) shall receive a certificate of registration signed by the members of said board.

Subdivision 6. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five per cent (75%) in his examination in such other state, he may, in the discretion of the said board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of all fees, provided the state from which said applicant comes offers equal privileges to applicants for certificates of registration from this state. [As amended Sec. 3, Ch. 130, L. 1939.]

3162. Registration of certificate in county. Recipients of said certificate of registration shall present the same for record to the county clerk and recorder of the county in which they reside, and shall pay a fee of one dollar (\$1.00) to the county clerk and recorder for recording same. Said county clerk and recorder shall record said certificate in a book to be provided by him for that purpose. Any person so licensed, removing his residence from one county to another in this state, shall, before engaging in the practice of optometry in such other county, obtain from the county clerk and recorder of the county in which said certificate of registration is recorded a certified copy of such record, or else obtain a new certificate of registration from the board of examiners, and shall before commencing practice in such county, file the same for record with the county clerk and recorder of the county to which he removes, and pay the county clerk and recorder thereof, for recording the same, a fee of one dollar (\$1.00). Any failure, neglect, or refusal on the part of any person holding such certificate or copy of record to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. Such board shall be entitled to a fee of one dollar (\$1.00) for the reissue of any cer-

tificate and the county clerk and recorder of any county shall be entitled to a fee of one dollar (\$1.00) for making and certifying the copy of the record of any such certificate. [As amended Sec. 4, Ch. 130, L. 1939.]

3166. Revocation of certificate for cause. Said board shall have the power to revoke any certificate of registration granted by it under this act for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or for unprofessional conduct. Unprofessional conduct shall mean: Obtaining any fee by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by this act; directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist, or accepting employment to practice optometry from any company or corporation, or accepting employment to practice optometry for any company or corporation; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; provided, that this act shall not prohibit legitimate or truthful advertising by any registered optometrist and provided that before any certificate shall be revoked, the holder thereof shall have notice in writing of the charge or charges against him, and, at a day specified in said notice, at least ten days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witness against him. Any person whose certificate has been revoked may appeal to the courts or may after the expiration of ninety days apply to have the same re-granted and the same shall be re-granted him upon a satisfactory showing that the disqualification has ceased. [As amended Sec. 5, Ch. 130, L. 1939.]

3167. Penalty for violations. Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be paid into the treasury of the board. [As amended Sec. 6, Ch. 130, L. 1939.]

CHAPTER 272, PHARMACY—REGULATION OF AND RESTRICTION ON SALE OF OPIATES—DRUG DEALERS' LICENSE

3170. Sale of drugs, medicines, etc., unlawful except as provided herein.

(a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) It shall be unlawful for any proprietor, owner or manager of a pharmacy, or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemi-

cals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an assistant pharmacist in the temporary absence of such pharmacist.

(c) It shall be unlawful for any person falsely to assume or pretend to the title of pharmacist or assistant pharmacist unless such person has a license as such issued and in force pursuant to the terms of this act.

(d) It shall be unlawful for any person other than a licensed and registered pharmacist, an assistant licensed and registered pharmacist to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons, except as in this act provided. [As amended Sec. 1, Ch. 175, L. 1939.]

Held, on appeal of defendant grocer in a prosecution for selling aspirin, a drug, in the original package, in violation of section 3170, Revised Codes, and section 3202.7 cited as Chapter 104, Laws of 1931, making it a public offense for any person other than a registered pharmacist to sell drugs without first having obtained a license, that the statutes are unconstitutional as an improper exercise of the

state's police power, it not appearing how, in view of the fact that druggists and pharmacists are absolved from all responsibility as to the purity and strength of drugs sold in the manufacturer's original package, by limiting their sale to them the public health can be preserved. *State v. Stephens*, 102 M 414, 416 et seq., 59 P 2d 54.

3170.1. Terms defined as used in this act. (a) The term "pharmacy" shall mean a drug store or other established place regularly registered by the state board of pharmacy, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended or sold at retail.

(b) The term "pharmacist" shall mean a natural person licensed by the state board of pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons, and such person shall be entitled to affix to his name the term REG-PH.

(c) The term "assistant pharmacist" shall mean a natural person licensed as such by the state board of pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons in a pharmacy having a pharmacist in charge.

(d) The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(e) The term "medicine" shall mean any remedial agent which has the property of curing, preventing, treatment or mitigating diseases, or which is used for such purpose.

(f) "Poisons" shall mean any substance, which when introduced into the system, either directly or by absorption, produces violent, morbid or fatal changes or which destroys living tissue with which it comes in contact.

(g) "Chemical" means all medicinal or industrial substances, whether simple or compound or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(h) The term "board" or "state board of pharmacy" shall mean the Montana state board of pharmacy.

(i) The term "secretary" shall mean the secretary of the Montana state board of pharmacy.

(j) The word "person" shall be construed to include every individual, co-partnership, corporation or association, unless the context otherwise requires.

(k) Masculine words shall include the feminine and neuter and the singular includes the plural.

(l) The term "wholesale" shall mean and include any sale for the purpose of resale.

(m) The phrase "commercial purposes" shall mean the ordinary purposes of trade, agriculture, industry and commerce, exclusive of the practices of medicine and pharmacy. [En. Sec. 2, Ch. 175, L. 1939.]

3171-3172. [Repealed Sec. 18, Ch. 175, L. 1939.]

3173. Montana state board of pharmacy—qualifications of members—term and appointment. The Montana state board of pharmacy shall consist of three (3) pharmacists who shall be graduates of the college of pharmacy of the state university of Montana or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy; each of whom shall have had at least five (5) consecutive years of practical experience as a pharmacist immediately preceding his appointment; provided, however, that one (1) member of the board may be a registered pharmacist of fifteen (15) years practical experience and actually engaged in the practice of pharmacy.

Term of office. The members of the board shall be appointed by the governor from the list hereinafter subscribed, one in each year; each member shall serve for a term of three (3) years and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment by the governor for the unexpired term. Any member of the board who, during his incumbency, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership upon the board, and such disqualification shall result in a vacancy which may be filled as provided. Any member may be removed from office by the governor upon proof of malfeasance or misfeasance in office after reasonable notice of charges against him and fair hearing thereon. The members of the Montana state board of pharmacy heretofore appointed and now holding office shall continue in office as members of the board hereby established until their respective terms expire. The Montana state pharmaceutical association shall annually submit to the governor the names of five (5) persons, qualified as prescribed herein, for each appointment to be made, from which list the governor shall appoint a member or members of the board as heretofore prescribed. [As amended Sec. 3, Ch. 175, L. 1939.]

3174. Montana state board of pharmacy—powers of board. (a) Organization of board, officers. The board shall annually elect from its members a president, a vice-president, a treasurer, and a pharmacist, who may or may not be a member, as secretary.

(b) Powers and duties of board of pharmacy. The Montana state board of pharmacy shall have power, and it shall be its duty:

(1) To regulate the practice of pharmacy in the state of Montana subject to the provisions of this act.

(2) To determine the minimum equipment necessary in and for a pharmacy and drug store.

(3) To regulate, under therapeutic classification, the sale of drugs, medicines, chemicals and poisons and their labeling.

(4) To regulate the quality of all drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or any revisions thereof, as the standards.

(5) To enter and inspect by its duly authorized representative at any reasonable times any and all places where drugs, medicines, chemicals or poisons are sold, vended, given away, compounded, dispensed or manufactured. It shall be a misdemeanor for any person to refuse to permit or otherwise prevent such representative from entering any such places and making such inspection.

(6) To examine, license and register as pharmacists all applicants whom the board shall deem qualified as such as prescribed herein. To license pharmacies and certain stores, and to issue certificates of "certified pharmacy" as in this act provided.

(7) To revoke temporarily or permanently, upon fair hearing, after reasonable notice of formal charges have been served, licenses issued by it to any pharmacist or assistant pharmacist whenever the holder of such license has obtained the same by false representations or fraud of any character or shall be an habitual drunkard or addicted to the use of narcotic drugs, or shall have been convicted of a felony, or shall have been convicted of violating the pharmacy law, or shall have been found guilty by the board of incompetency in the preparation of prescriptions, or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant subject to the right of any person whose license may be revoked to review by the district court of the proper county on any question of law and fact.

(8) To report its proceedings annually to the governor and to the state pharmaceutical association with such information and recommendations as it deem proper, giving the names of pharmacists and assistant pharmacists registered and licensed during the year, and the items of its receipts and disbursements.

(9) To employ necessary assistants, and make rules for the conduct of its business.

(10) To perform such other duties and exercise such other powers as the provisions of the act may require.

(11) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act. [As amended Sec. 4, Ch. 175, L. 1939.]

3175. Salaries and expenses of officers of board. Each member of the board shall receive five dollars (\$5.00) a day for his actual services as such, and his necessary expenses in attending meetings. The secretary shall receive a salary to be fixed by the board, and all expenses necessarily in-

curred by him in the performance of his duties. The secretary shall give bond in such amount as the board may from time to time require, which bond shall be conditioned for the faithful performance of his duties and shall be approved by the board. [As amended Sec. 5, Ch. 175, L. 1939.]

3176. Examination of applicants for registration fees—certificates. (a) The board shall meet at least once a year to examine applicants for registration as pharmacists and assistant pharmacists and to transact its other business, giving reasonable notice of all examinations by mail, to all known applicants therefor. The secretary shall record the names of all persons examined by the board together with the grounds upon which the right of each to examination was claimed and also the names of all persons registered by examination or otherwise. The fee for any examination shall be fifteen dollars (\$15.00) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(b) Upon again making payment of such fee any applicant who fails may be entitled to take the next succeeding examination free of charge.

(c) Fees for registration by reciprocity shall be twenty-five dollars (\$25.00).

Qualifications for examination. To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, at least twenty-one years of age, and shall be a graduate of the school of pharmacy of the state university of Montana or of a college or school of pharmacy recognized and approved by, or a member, of the American association of colleges of pharmacy, but such applicant shall not receive a license until he has at least one year of practical experience in a pharmacy which has been approved by the board of pharmacy. During this year, provided applicant has passed such examination, he shall be licensed as an assistant pharmacist only.

Reciprocity. The board may, in its discretion, grant registration without examination, to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, provided the requirements for registration in such other state are, in the opinion of the board, equivalent to the requirements herein provided. Every person licensed and registered under this act shall receive from the state board of pharmacy an appropriate certificate attesting the fact as it may be which certificate shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

Pharmacists or assistants not required to be examined or to register anew under this act. Persons, who, at the time of the enactment of this law, hold certificates of registration as pharmacists, or assistant pharmacists, granted by the state board of pharmacy of this state, shall not be required to submit to examinations or to register anew under this law, but all such persons shall apply for and secure annual renewals of their present registration as provided in this act, and in all other respects be amenable to and governed by the provisions of this act and the rules and regulations of the board from time to time promulgated under this act. [As amended Sec. 6, Ch. 175, L. 1939.]

3177. Annual renewal of registration fees. Every person licensed and registered by the board shall annually pay to the board a renewal of registration fee of five dollars (\$5.00). It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. Every certificate and renewal shall expire at the time prescribed, not later than one year from its date. Any person who has been registered and licensed by the board and has defaulted in the payment of said renewal fee may be reinstated within two (2) years of such default without examination upon payment of the arrears. [As amended Sec. 7, Ch. 175, L. 1939.]

3177.1. Licenses for stores selling drugs—"certified pharmacy" revocation. (a) The state board of pharmacy shall upon application upon such forms as it may prescribe, and upon the payment of an annual fee of three dollars (\$3.00), license pharmacies and stores other than a pharmacy wherein may be sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state wherein such manufacturer resides. The name and address of such manufacturer shall appear conspicuously on each package sold by such licensee. It shall be unlawful for any such store to sell such household medicinal drugs, without first having secured such license and thereafter keeping the same in force by proper renewal, provided, also, that nothing herein shall be construed to prevent any vendor from selling any patent or proprietary medicine in the original package when plainly labeled, nor such non-medical articles as are usually sold by such vendors.

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of this act. Upon presentation of evidence satisfactory to the board, it may license any pharmacy as a "certified pharmacy", provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or assistant registered pharmacists qualified as herein prescribed. Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy unless such license has been duly issued and is in full force and effect.

(c) The board may suspend, revoke or refuse to renew any store or pharmacy license obtained by false representation, or fraud of any character, or when the pharmacy for which the license shall have been issued is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom license shall have been granted has been convicted for violation of any of the provisions of the act or for a felony, or, if a natural person, whose pharmacist or assistant pharmacist license has been revoked or when the store or pharmacy is conducted in violation of the provisions of this act. Before any license can be revoked the holder thereof shall be entitled to a hearing by the board after reasonable notice, and judicial review of the action of the board. [En. Sec. 8, Ch. 175, L. 1939.]

3177.2. Judicial review of acts of board. (a) Review by the district court of any order revoking either permanently or temporarily a license

of any pharmacist or assistant pharmacist, or any store or pharmacy, or any order, decision or finding of the board shall be made by petition in writing filed with the clerk of the district court of the county wherein the pharmacist or assistant pharmacist, store or pharmacy, or other affected person or business was operating at the time of the revocation of any such license, or at the time of such order, decision or finding. The petition shall concisely state the facts and order complained against.

(b) Upon the filing of said petition an order shall be made by the district judge setting a time for hearing on said petition not less than twenty (20) days thereafter and directing service of the petition upon the secretary of the board not less than three (3) days thereafter. The board must file and serve answer on the merits not less than five (5) days before the hearing.

(c) The court shall have power to sustain the board's action or annul the same, or order the board to act further or to restore any revoked license. Appeals from the district court's action to the supreme court may be taken at any time within sixty (60) days after entry of the final order or judgment of the court. [En. Sec. 9, Ch. 175, L. 1939.]

3178-3184. [Repealed Sec. 18, Ch. 175, L. 1939.]

3187.1. Use of words "drug store", "pharmacy", etc., when unlawful. It shall be unlawful for any person to carry on, conduct or transact a retail business under a name which contains as a part thereof, the words, "drugs", "drug store", "pharmacy", "medicine", "apothecary", or "chemist shop", or any abbreviations, translations, extension or variation thereof; or in any manner by advertisement circular or poster, sign or otherwise, describe or refer to the place of business conducted by such person by such term, abbreviations, translation, extension or variation unless the place so conducted is a pharmacy within the meaning of this act, and duly licensed as such and in charge of a registered pharmacist. [En. Sec. 11, Ch. 175, L. 1939.]

3187.2. Wrongful labeling. It shall be unlawful for any person who prepares prescriptions, drugs, medicines, chemicals or poisons wilfully, negligently, or ignorantly to omit to label the package or receptacle, label it falsely, substitute an article different from the one ordered or deviate in any manner from the requirements of an order or prescription. [En. Sec. 12, Ch. 175, L. 1939.]

3187.3. Quality of drugs sold—adulteration—who is responsible.

(a) It shall be unlawful for any person or his agent to adulterate any drug, medicinal substance or preparation authorized by the United States pharmacopoeia or the national formulary or any revision thereof, or any drug, medicinal substance or preparation used or intended to be used in medical practice.

(b) It shall be unlawful to mix with any such article any foreign or inert substance for the purpose of weakening its medicinal effect or of cheapening it.

(c) Nothing in this act shall be construed to change any of the provisions of the food, drug and cosmetic act of Montana. [En. Sec. 13, Ch. 175, L. 1939.]

3187.4. Exceptions. (a) Nothing in this act shall subject a person duly licensed in this state to practice medicine, dentistry or veterinary medicine to inspection by the board nor prevent such person from compounding or using drugs, medicines, chemicals or poisons in his practice nor prevent one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals or poisons as he deems proper in the treatment of such patient.

(b) Nothing herein shall prevent the sale of drugs, medicines, chemicals or poisons at wholesale.

(c) Nothing herein shall prevent the sale of drugs, chemicals or poisons, either at wholesale or retail, for use for commercial purposes, or in the arts, nor be construed to change any of the provisions of chapter 238 of volume II of the political code of the revised codes of Montana, 1935, relating to the sale of insecticides and fungicides, and nothing in this act shall prevent the sale of common household preparations and other drugs, provided stores selling same are licensed under the terms of this act.

(d) Nothing herein shall apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature, for use for non-medicinal purposes. [En. Sec. 14, Ch. 175, L. 1939.]

3189. Regulation of sale of opium and other narcotics. [Repealed Sec. 29, Ch. 176, L. 1937.]

3190-3193. [Repealed Sec. 29, Ch. 176, L. 1937.]

3199-3202. [Repealed Sec. 29, Ch. 176, L. 1937.]

3202.3-3202.6. [Repealed Sec. 29, Ch. 176, L. 1937.]

3202.7-3202.9. [Repealed Sec. 18, Ch. 175, L. 1939.]

3202.10. Attorney general to be attorney for state board of pharmacy—prosecutions—secretary to assist in enforcement—duties of county attorneys. The attorney general of the state of Montana shall be the attorney for the Montana state board of pharmacy but said board may in its discretion employ other counsel. The secretary of the Montana state board of pharmacy shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general or other counsel in the administration and enforcement of this act. It shall be the duty of the county attorney of any county wherein any offense hereunder is committed to prosecute the offender. The board, its secretary or the county attorney is authorized to examine the books of any manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, assistant pharmacist or pharmacy within the state for the purpose of acquiring information to aid in prosecutions hereunder. [As amended Sec. 10, Ch. 175, L. 1939.]

3202.11. Violation of act a misdemeanor. Any person, firm, co-partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly, and any thereof so convicted shall automatically lose any license issued by the board. [As amended Sec. 15, Ch. 175, L. 1939.]

3202.12. Disposition of fees and fines. (a) The board shall, in each year, turn over out of the annual fees collected by the board to the Montana state pharmaceutical association for the advancement of the science and art of pharmacy, and for the enforcement of this or any other law relating to

drug stores, or other stores licensed herein, or relating to pharmacists, two dollars (\$2.00) for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year.

(b) All fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy as provided by law.

(c) All fines paid under the provisions of this act or in connection with the enforcement thereof shall be paid to the credit of the common school fund of the state of Montana; provided that no salaries or expenses of the board of pharmacy shall be paid out of the state treasury.

(d) On or before June 30th in each fiscal year the board shall remit to the state treasurer for the credit of and to be paid into the general fund, any moneys in its possession in excess of the sum of fifteen hundred dollars (\$1500.00). [As amended Sec. 16, Ch. 175, L. 1939.]

3202.13. Construction of act. If any section, subsection, clause or phrase of this act shall be held invalid, such decision shall not affect the validity of the remaining portions of this act. It is hereby declared that this act would have been passed irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases are declared unconstitutional or invalid. [As amended Sec. 17, Ch. 175, L. 1939.]

CHAPTER 272-A, UNIFORM DRUG ACT

3202.14. Definitions. The following words and phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the secretary of the state board of health as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(9) "Laboratory" means a laboratory approved by the secretary of the state board of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(11) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

(13) "Cannabis" includes the following substances under whatever names they may be designated: (a) The dried flowering or fruiting tops of the pistillate plant *Cannabis Sativa* L., from which the resin has not been extracted, (b) the resin extracted from such tops, and (c) every compound, manufacture, salt, derivative, mixture, or preparation of such resin, or of such tops from which the resin has not been extracted, and (d) marihuana seeds or plants.

(14) "Narcotic drugs" means coca leaves, opium, cannabis, marihuana, Indian hemp, and every substances neither chemically nor physically distinguishable from them.

(15) "Federal narcotic laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(16) "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the secretary of the state board of health.

(17) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(18) "Registry number" means the number assigned to each person registered under the federal narcotic laws. [En. Sec. 1, Ch. 176, L. 1937.]

NOTE.—Uniform State Law: Sections 3189.1-3189.28 constitute the "Uniform Narcotic Drug Act" approved by the National Conference of Commissioners on Uniform State Laws in 1932 and adopted in the states of Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky,

Louisiana, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming and also in the District of Columbia, in Hawaii and Puerto Rico.

3202.15. Acts prohibited. It shall be unlawful for any person to manufacture, possess, knowingly permit to grow, have under his control, sell,

prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this act. [En. Sec. 2, Ch. 176, L. 1937.]

3202.16. Manufacturers and wholesalers. No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the secretary of the state board of health. [En. Sec. 3, Ch. 176, L. 1937.]

3202.17. Qualification for licenses. No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the secretary of the state board of health:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The secretary of the state board of health may suspend or revoke any license for cause. [En. Sec. 4, Ch. 176, L. 1937.]

3202.18. Sale on written orders. (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler or apothecary.

(b) To a physician, dentist, or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States public health service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) Use of official written orders. An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the

person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal narcotic laws, respecting the requirements governing the use of order forms.

(4) Possession lawful. Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this act. [En. Sec. 5, Ch. 176, L. 1937.]

3202.19. Sales by apothecaries. (1) An apothecary, in good faith, may dispense and sell narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per cent of the complete solution to be used for medical purposes. [En. Sec. 6, Ch. 176, L. 1937.]

3202.20. Professional use of narcotic drugs. (1) Physicians and dentists. A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

(2) Veterinarians. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may pre-

scribe, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. [En. Sec. 7, Ch. 176, L. 1937.]

3202.21. Preparations exempted. Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, (a) not more than two grains of opium, (b) not more than one-quarter grain of morphine or of any of its salts, (c) not more than one grain of codeine or any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more than one-half of a grain of extract of cannabis nor more than one-half of a grain of any more potent derivative or preparation of cannabis; (f) and not more than one of the drugs named above in clauses (a), (b), (c), (d), and (e).

(2) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this act shall apply to all liniments, ointments, and other preparations, that contain coca leaves in any quantity or combination.

The exemptions authorized by this section shall be subject to the following conditions:

(a) No person shall prescribe, administer, dispense, or sell under the exemptions of this section, to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when he knows, or can by reasonable diligence ascertain, that such prescribing, administering, dispensing, or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed, or sold within any forty-eight consecutive hours, with more than four grains of opium, or more than one-half grain of morphine or of any of its salts, or more than four grains of codeine, or of any of its salts, or more than one grain of extract of cannabis or one grain of any more potent derivative or preparation of cannabis, or more than one-quarter of a grain of heroin or of any of its salts, or will provide such person or the owner of such animal, within 48 consecutive hours, with more than one preparation exempted by this section from the operations of this act.

(b) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparations shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this act. [En. Sec. 8, Ch. 176, L. 1937.]

3202.22. Record to be kept. (1) Physicians, dentists, veterinarians, and other authorized persons. Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided: That no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight consecutive hours, (a) four grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or of any of its salts, or (e) one grain of extract of cannabis or one grain of any more potent derivative or preparation of cannabis, or (f) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(3) Apothecaries. Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(4) Vendors of exempted preparations. Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 3202.21, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

(5) Form and preservation of records. The form of records shall be prescribed by the secretary of the state board of health. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced; and the proportion of resin contained in or producible from the dried flowering or fruiting tops of the pistillate plant *Cannabis Sativa* L., from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and ad-

dress of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft. [En. Sec. 9, Ch. 176, L. 1937.]

3202.23. Labels. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this act, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed. [En. Sec. 10, Ch. 176, L. 1937.]

3202.24. Authorized possession of narcotic drugs by individuals. A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed, by a physician, dentist, apothecary, or other person authorized under the provisions of section 3189.5, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [En. Sec. 11, Ch. 176, L. 1937.]

3202.25. Issuance and execution of search warrant—seizure of narcotic drugs. If upon the sworn complaint of any person, it shall be made to appear to any judge of the district court that there is probable cause to believe that narcotic drugs are being manufactured, sold, exchanged, given away, bartered, or otherwise disposed of, or kept contrary to law, such judge shall, with or without the approval of the county attorney, issue a warrant directed to any peace officer in the county, commanding him to search the premises designated and described in such complaint and warrant, and to seize all narcotic drugs there found, together with vessels and vehicles in which it is contained, and all implements, furniture, fixtures and other articles used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of such narcotic

drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all narcotic drugs, implements, furniture, fixtures, vehicles, and other articles seized, and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of the same, the return shall so state. No warrant shall be issued to search a private dwelling occupied as such, unless some part of it is used as a store or shop, hotel or boarding house, or for any other purpose than a private residence, or unless such residence is a place of public resort. A copy of said warrant shall be served upon the person or persons found in possession of any such narcotic drugs, furniture, fixtures, vehicles, or articles so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same were found, or if there be no door, then in any conspicuous place upon the premises. [En. Sec. 12, Ch. 176, L. 1937.]

3202.26. Hearing of return—disposal of narcotic drugs and other articles seized. Upon the return of the warrant as provided in the last preceding section, the judge shall fix the time, not less than ten days nor more than twenty days thereafter, for the hearing of said return, when the court shall proceed to hear and determine whether or not the implements, furniture, fixtures, vehicles, or other articles so seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of the laws of this state relating to narcotic drugs. As such hearing any person claiming any interest in any of the implements, furniture, fixtures, vehicles, or other articles seized, may appear and be heard upon filing a verified claim setting forth particularly the character and extent of his interest, but upon such hearing the sworn complaint or affidavit upon which the search warrant was issued and the possession of such narcotic drugs shall be prima facie evidence of the contraband character of the drugs and implements, furniture, fixtures, vehicles and other articles seized, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest therein, and that the same were not used in violation of, and were not in any manner kept or possessed with the intention of violating any of the provisions of the laws of this state relating to narcotic drugs. If, upon such hearing, the evidence warrants, or if no person shall appear as claimant, the court shall thereupon enter a judgment of forfeiture and order such implements, furniture, fixtures, vehicles and articles destroyed forthwith by the officer having custody of the same at the time of adjudication; provided, however, the judge may, in his discretion, appoint a special officer for the purpose of executing the judgment of forfeiture by destroying said drugs and property: provided, further, however, that if in the opinion of the judge any of such forfeited vehicles or property, is of value and adapted to any lawful use, such judge shall, as a part of the order and judgment, direct that such property, other than narcotic drugs, shall be sold as upon execution by the officer having them in custody, and the proceeds of such sale, after the payment of all costs of such proceeding, shall be paid into the common school fund of the school district in which the same were seized. Action under this section and the forfeiture, destruction, or sale of any property thereunder, shall not be a bar to any prosecution under any other

provision or provisions of the laws of this state relating to narcotic drugs and provided further, that all narcotic drugs so seized shall be held in the custody of the court issuing the order, for disposition as otherwise provided in this act. [En. Sec. 13, Ch. 176, L. 1937.]

3202.27. Duty of peace officers to arrest offenders and seize narcotic drugs. When any violation of any provisions of the laws of this state relating to narcotic drugs shall occur in the presence of any sheriff, constable, marshal, or other officer having power to serve criminal process, it shall be the duty of such officer without warrant, to arrest the offender, and to seize the drugs, furniture, fixtures, vessels, vehicles and appurtenances thereunto belonging, so unlawfully used, and to take such offender immediately before the court or judge having jurisdiction in the premises and there make complaint under oath, charging the offense so committed, and he shall also make return setting forth a particular description of the narcotic drugs and property seized and of the place and where the same was so seized, whereupon the court or judge shall issue a warrant commanding and directing the officer to hold in his possession the property so seized, until discharged by process of law, and such property shall be held and a hearing or adjudication on said return had in like manner as if the seizure had been made upon a warrant therefor. [En. Sec. 14, Ch. 176, L. 1937.]

3202.28. Replevin of narcotic drugs and other property forbidden. No narcotic drugs, vessels, fixtures, furniture or other property seized by authority of any warrant issued under the provisions of this act shall be taken from the possession of the officer seizing the same under any replevin or other process. [En. Sec. 15, Ch. 176, L. 1937.]

3202.29. Fines and costs a lien on property—disposal of. All fines and costs assessed against any person for any violation of any of the provisions of the laws of this state relating to narcotic drugs, shall be a lien upon the real estate of such person until paid; and in case any person shall let or lease any building or premises, and shall knowingly suffer the same to be used and occupied for the manufacture or sale of narcotic drugs, the premises so leased and occupied shall be subject to lien for, and may be sold to pay all fines and costs assessed against any such occupant for any violation of this act; and such liens may be enforced by civil action in any court having jurisdiction; provided, that the person against whom such fines and costs are assessed shall be committed to the jail of the county until such fines and costs are paid. [En. Sec. 16, Ch. 176, L. 1937.]

3202.30. Persons and corporations exempted. The provisions of this act restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties [En. Sec. 17, Ch. 176, L. 1937.]

3202.31. Common nuisances. Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted

to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance. [En. Sec. 18, Ch. 176, L. 1937.]

3202.32. Narcotic drugs to be delivered to state official, etc. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the secretary of the state board of health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said secretary of the state board of health, for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this state, not operated for private gain, the secretary of the state board of health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicant for medicinal use. The secretary of the state board of health may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy the same.

(d) The secretary of the state board of health, shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws. [En. Sec. 19, Ch. 176, L. 1937.]

3202.33. Notice of conviction to be sent to licensing board. On the conviction of any person of the violation of any provision of this act, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officers may reinstate such license or registration. [En. Sec. 20, Ch. 176, L. 1937.]

3202.34. Records confidential. Prescriptions, orders, and records required by this act, and stocks of narcotic drugs, shall be open for inspection

only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. [En. Sec. 21, Ch. 176, L. 1937.]

3202.35. Fraud or deceit. (1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this act.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 3202.21, in the same way as they apply to transactions under all other sections. [En. Sec. 22, Ch. 176, L. 1937.]

3202.36. Exceptions and exemptions not required to be negatived. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this act, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this act, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. [En. Sec. 23, Ch. 176, L. 1937.]

3202.37. Enforcement and cooperation. It is hereby made the duty of the secretary of the state board of health, its officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this act, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs. [En. Sec. 24, Ch. 176, L. 1937.]

3202.38. Penalties. Any person violating any provision of this act shall upon conviction be punished, for the first offense by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not exceeding six (6) months or by both such fine and imprisonment, and for any subsequent offense, by a fine not exceeding five thousand dollars

(\$5,000.00), or by imprisonment in the state prison for not exceeding five (5) years, or by both such fine and imprisonment. Any person who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs in violation of the provisions of this act, to any person of the age of eighteen (18) years, or under, shall upon conviction be punished by imprisonment in the state prison for not less than five years nor more than life. [En. Sec. 25, Ch. 176, L. 1937.]

3202.39. Effect of acquittal or conviction under federal narcotic laws. No person shall be prosecuted for the violation of any provision of this act if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged, constitutes a violation of this act. [En. Sec. 26, Ch. 176, L. 1937.]

3202.40. Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it. [En. Sec. 28, Ch. 176, L. 1937.]

3202.41. Name of act. This act may be cited as the "Uniform Drug Act." [En. Sec. 30, Ch. 176, L. 1937.]

CHAPTER 275, COSMETOLOGY AND HAIRDRESSING—REGULATION OF PRACTICE

3228.1. License required to practice or teach cosmetology and provision for registration of schools of cosmetology. That on and after the date on which this act goes into effect, no person shall practice or teach cosmetology without a license and no place shall be used or maintained for the teaching of cosmetology, for compensation, except under a certificate of registration issued in compliance with the requirements of this act. [As amended Sec. 1, Ch. 222, L. 1939.]

3228.2. Definition. The practice and teaching of cosmetology is defined to be and includes any or all work generally and usually included in the term "hairedressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness and beautification of the hair, scalp, face, arms or hands. Provided, however, that itinerant cosmetologists shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes, in any regularly established store or place of business, holding a license from the state of Montana as such store or place of business. [As amended Sec. 2, Ch. 222, L. 1939.]

3228.3. Requirements for practicing or teaching cosmetology or operating a school of cosmetology. Before anyone may practice or teach cosmetology, or any person, firm, or co-partnership, or corporation may operate a school of cosmetology, such person, firm, or co-partnership or corporation must obtain a license or certificate of registration from the state board as hereinafter provided. To be eligible to take the examination to practice cosmetology, the applicant must be not less than eighteen (18) years of age and a graduate of the eighth grade school, and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in an accredited beauty school, which course of study has been distributed over a period of not less than

ten (10) months or more than twelve (12) months, and has received a diploma from said beauty school. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology. Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he or she must have a diploma from an accredited beauty school, and must also have a license to practice cosmetology, and must show that he or she has been actively engaged as a beauty operator for three (3) continuous years prior to taking said teachers' examination. Said applicant must qualify by filing an application as prescribed by the board and by taking and passing such examination as prescribed and given by the state board before a license shall issue. Such license must be renewed annually as herein provided.

Provided, however, that the state board may issue apprentice licenses to applicants who are at least eighteen (18) years of age, high school graduates and of good moral character. Such applicants must register with the secretary of the state board before commencing the apprenticeship upon such form as the state board shall prescribe for such apprenticeship license. Such apprentice, after two (2) continuous years under a licensed cosmetologist, must take the state board examination for an operator's license. Provided, however, the board shall not issue more than one (1) apprenticeship license to a licensed beauty shop, excepting such shops as have five (5) or more licensed operators, in which case the number of apprentices shall be limited to one (1) apprentice for every five (5) operators or a fraction thereof.

Provided, further, the board may grant to graduates of accredited schools of this state upon the payment of a fee of two dollars (\$2.00) a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board. No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm, or co-partnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

- (1) Have in its employ a licensed teacher who shall be, at all times, in the immediate supervision of the work of said school, or such other teachers as the state board may determine is necessary for the proper conduct of said school. Provided, however, that there shall not be more than twenty-five (25) students to each such teacher.

(2) It shall possess such apparatus and equipment as the state board may determine is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(3) It shall maintain a school term of not less than two thousand (2,000) hours extending over a period of ten (10) consecutive months, and shall prescribe a course of practical training and technical instructions equal to the requirements for state board examinations, which course of training and technical instruction shall be prescribed by the state board.

(4) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(5) No owner, or person in charge of a school of cosmetology shall permit any person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, any room used, wholly or in part for a school of cosmetology.

(6) Certificates of registration may be refused, revoked, or suspended, as provided in section 3228.11, hereof.

(7) The state board shall have the power to prescribe such further rules and regulations as they deem necessary for the proper conduct of schools of cosmetology.

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from communicable disease. [As amended Sec. 3, Ch. 222, L. 1939.]

3228.4. Creation of state examining board of beauty culturists—term—appointment—qualifications. There is hereby created a state examining board which shall be called and styled "the Montana state examining board of beauty culturists", consisting of three members, each of whom shall be a hairdresser or cosmetologist, to be appointed by the governor, from a list of six persons recommended by the Montana state hairdressers' association. Each member hereinafter appointed shall serve four (4) years and until his or her successor is appointed. The members hereinafter appointed on said board must have been actively engaged in the profession of cosmetology for at least five (5) years prior to such appointment, and must have been a resident of the state of Montana for at least five (5) years prior to such appointment. No two members of the said board shall be members of or affiliated with any school of cosmetology. The board hereby created shall be referred to hereinafter as the "state board". Said board shall adopt a seal to authenticate its acts. [As amended Sec. 4, Ch. 222, L. 1939.]

3228.5. Meeting—officers to be selected. The state board shall annually, on or before the first of March of each year, elect from their number a president, vice-president, and secretary-treasurer. [As amended Sec. 5, Ch. 222, L. 1939.]

3228.7. Registration—licenses. If the board finds that an applicant for examination, or for certificate of registration, has complied with the requirements of this act and has paid the required fee, the board shall admit such applicant to examination and shall issue a license or certificate of registration to those who have successfully passed such examination or

are entitled to such certificate of registration in accordance with the provisions of this act. [As amended Sec. 6, Ch. 222, L. 1939.]

3228.8. Examinations. Examinations for operator's license shall be held at least two times a year and not more than five times a year and for teacher's license once each year, at a place and time specified by said board. Such examinations shall be conducted by said state board or by examiners appointed by a majority of said board for such purpose. Such examiners shall have had at least three years practical experience and shall be licensed cosmetologists and shall not be connected with any school of cosmetology in the state of Montana. The examinations shall not be confined to any specific method or system.

Provided that physically handicapped persons trained for cosmetology under the state bureau of vocational rehabilitation shall, for a period of one year immediately following their graduation, be exempted from this examination and the fees described in section 3228.15. Upon certification from the state supervisor of rehabilitation that a bureau beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the secretary of the state board shall issue such person the necessary certificate or license to practice the profession in Montana. [As amended Sec. 7, Ch. 222, L. 1939.]

3228.9. Compensation of members of board. Each member of the board shall receive, as compensation for his or her services, the sum of ten dollars (\$10.00) for each day's actual attendance at board meetings, not to exceed three consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All such compensation and necessary expenses shall be paid by the board out of the funds received by it and no part shall be paid by the state. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance at board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners; provided, however, that no payments shall be made by the board except upon a verified claim filed with the board and approved by the majority thereof, and by warrants signed by the president and secretary-treasurer of the board. [As amended Sec. 8, Ch. 222, L. 1939.]

3228.10. Bond of secretary-treasurer. The secretary-treasurer of said state board shall give a corporate surety bond payable to the board, in the sum of five thousand dollars (\$5,000.00) approved by the said board, conditioned as the board may specify for the faithful performance of the duties of this office. Such bond shall have the oath of office endorsed thereon and shall be deposited with the president of the board, and kept in his or her office. [As amended Sec. 9, Ch. 222, L. 1939.]

3228.11. Powers and duties of the board to refuse, revoke, or suspend licenses and the procedure therefor. The board shall have the power to refuse, refuse to renew, revoke, or suspend licenses as follows:

The board shall not issue, or having issued, shall not renew, or may revoke, or suspend, at any time any license as required by the provisions of this act, in any one of the following cases: (a) failure of a person, firm, co-partnership or corporation operating a cosmetological establishment or school of cosmetology to comply with the requirements of this act; (b) failure to comply with the sanitary rules, adopted by the board and approved by the state board of health, for the regulation of cosmetological establishments or schools of cosmetology; (c) gross malpractice; (d) continued practice by a person knowingly having an infectious or contagious disease; (e) habitual drunkenness, or habitual addiction to the use of morphine or any habit-forming drugs; (f) permitting a certificate of registration or license to be used where the holder thereof is not personally, actively, and continuously engaged in business; (g) failure to display the license; provided, however, that the said board shall not refuse to issue or renew any license as required by the provisions of this act, or revoke or suspend any such license already issued, except upon ten (10) days' notice in writing to the interested parties, which notice shall contain a brief statement of the reasons for the contemplated action of the board and designate a proper time and place for the hearing of all interested parties before any final action is taken as hereinafter provided; provided, however, that due notice within the provisions of this section shall be deemed to have been given when the board shall have placed in the United States postoffice a copy of the notice as hereinabove provided, addressed to the designated or last known residence of the person applying for such license or to whom such license has already been issued; provided, further, that any person, firm, co-partnership or corporation whose license to do business as herein provided is revoked or suspended or who is refused a license or a renewal of a license already issued may commence an action in a court of competent jurisdiction against the state board of cosmetology for the purpose of cancelling or obtaining other relief from the act of the said board. All provisions of the code of civil procedure relating to pleadings, proofs, trials and appeals shall be applicable to such action. [As amended Sec. 10, Ch. 222, L. 1939.]

3228.13. Inspector of beauty parlors—salary and expense. The state board of health, with the approval of the state board, shall appoint and may remove one or more inspectors who are licensed to practice under this act, each of whom shall devote his or her time to inspecting beauty parlors and performing such other duties connected therewith as the state board may direct. Such inspectors may enter any beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of any licensee to permit such inspection during business hours shall be cause for revocation of such license. The salary of such inspectors shall be fixed by the state board and such salary and expenses shall be paid out of the funds of the state board, and not otherwise, upon the presentation of a verified claim as hereinabove provided. [As amended Sec. 11, Ch. 222, L. 1939.]

3228.15. Fees. Each applicant for examination to practice or teach shall pay, at the time of such application, a fee of ten dollars (\$10.00). Each person practicing cosmetology as an operator shall pay a fee of five dollars (\$5.00) for the issuance of a license, and a further fee of five dollars (\$5.00)

annually for each renewal thereof. Each person teaching cosmetology shall pay a fee of five dollars (\$5.00) for the issuance of a license, and the further sum of five dollars (\$5.00) annually for each renewal thereof. Every person, firm, co-partnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of twenty-five dollars (\$25.00) for a certificate of registration therefor, and pay the further sum of twenty-five (\$25.00) annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of five dollars (\$5.00). Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five dollars (\$25.00). Such license fees shall be paid annually in advance to the secretary of the board. [As amended Sec. 12, Ch. 222, L. 1939.]

3228.16. Duration and renewal of licenses and certificates. Licenses and certificates shall be issued for no longer than one year. All licenses and certificates shall expire on the 31st day of December next succeeding unless renewed for the next year. Licenses and certificates may be renewed by application made prior to the 31st day of December of each year, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under special rules adopted by the board. [As amended Sec. 13, Ch. 222, L. 1939.]

3228.17. Penalties. Any person or persons who shall practice, teach, or operate a school of cosmetology or practice as an itinerant cosmetologist, as herein defined, without having first obtained the license or certificate of registration as required, and without complying with the provisions of this act, shall be guilty of a misdemeanor. All fines and penalties shall be paid into the treasurers of the several counties for the use and benefit of the common school fund thereof. [As amended Sec. 14, Ch. 222, L. 1939.]

CHAPTER 276, BARBERS AND BARBER SHOPS

3228.19. Sanitation of barber shops, barber schools and barber colleges and definition of term "barber shop". All barber shops, barber schools and barber colleges shall be operated and maintained in a sanitary condition so as to preserve the public health and prevent the spread of disease. The board of barber examiners and the state board of health of the State of Montana are hereby empowered to make and enforce all reasonable rules and regulations so as to preserve the public health and prevent the spread of disease. No barber, or barber apprentice, shall receive a certificate of registration, nor a renewal of same, until he has presented to the board of barber examiners a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public, and any person practicing barbering without a certificate of registration is guilty of a violation of this act.

(a) It shall be unlawful for any barber, barber apprentice or student of barbering to practice the occupation of a barber, or do any barber work while he has an infectious, contagious or communicable disease that would endanger the health of the public.

(b) If a barber, or barber apprentice, shall, after securing his certificate contract a communicable, infectious or contagious disease, endangering the public health, the board shall upon proof of same revoke or suspend his certificate of registration until such time as the board shall have satisfactory proof that such barber, or barber apprentice, is no longer afflicted with such communicable, infectious or contagious disease.

(c) The term "barber shop" as used herein is defined as a place where any person or persons carry on, engage in, practice or causes to be carried on, engaged in or practiced the business of barbering as the same is defined in chapter 127 of the session laws of the twenty-first legislative assembly of 1929 of the state of Montana. [As amended Sec. 1, Ch. 183, L. 1937.]

Chapter 127, Laws of 1929, prohibiting persons from practicing the calling of a barber without having first obtained a license from the board of barber examiners and exempting barbers practicing in the state on the date the Act became effective, but not exempting those practicing in other states, held not unconstitutional as to one who at the time the Act went into effect was engaged in the business of barbering in a foreign state, and who

was convicted of practicing without a license, as against his contention that the Act violates the equal protection clause of the Fourteenth Amendment to the federal Constitution, as well as the due process clause of the federal and state Constitutions. *State v. Bays*, 100 M 125, 126 et seq., 47 P 2d 50.

NOTE.—Chapter 127 of the 1929 Session Laws referred to above became Sections 3228.19-3228.30, R. C. M., 1935.

3228.20. Practice of barbering defined. Any one or any combination of the following practices, when done upon the human body for tonsorial purposes, and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

Shaving or trimming the beard.

Cutting the hair.

Giving facial or scalp massage, or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances.

Singeing or shampooing the hair or applying hair tonic; or dyeing the hair of male persons;

Applying cosmetic preparations, antiseptics, powders, oils, lotions to scalp, face or neck. [As amended Sec. 2, Ch. 183, L. 1937.]

3228.21. Licensing and registration of barbers, barber shops, barber schools and barber colleges. A. A person is qualified to receive a certificate of registration to practice barbering:

(1) Who has practiced as a registered apprentice for a period of eighteen (18) months under the immediate personal supervision of a registered barber; and who has passed a satisfactory examination conducted by the board of barber examiners to determine his or her fitness to practice barbering as defined by section 3228.20 as amended.

(2) Who is a graduate of a standardized school of barbering, (having a curriculum as adopted by the national educational council of barber examiners, and who has attended such school for the time prescribed herein and which school of barbering has been approved by the board of barber examiners of the state of Montana), and who has passed a satisfactory and practical examination conducted by the said board of barber examiners to determine his or her fitness to practice barbering.

(3) Who has served as an apprentice. An apprentice, for the purpose of this act, is a person who receives instruction in an approved barber school, or college, or from a barber authorized to practice barbering in the state of Montana.

Every apprentice must file with the board of barber examiners a statement in writing showing the name and place of business of his or her instructor, or school, the date of commencement of the apprenticeship, and the full name and age of said apprentice, and shall pay to the board of

barber examiners a fee of three dollars (\$3.00), whereupon the board of barber examiners shall issue the said apprentice a card.

B. No registered apprentice may independently practice, or engage in the practice of barbering; provided, however, he may do any and all of the acts which constitute the practice of barbering when so done under the immediate personal supervision of a registered barber.

C. No school, or college, of barbering shall be approved by the board of barber examiners unless it teaches the curriculum of the standardized schools approved by the national educational council of barber examiners. Students of said schools or colleges may, after attending such schools for a period of six (6) months, make application to the board of barber examiners for an apprenticeship certificate to practice barbering under the immediate personal supervision of a licensed barber for the period of one (1) year, after which time said students may then make application to take the examination for a barber's certificate of registration.

D. A barber shop, school or college must be conducted at a fixed place of establishment; no person or corporation shall open or maintain a barber shop, school or college, or hold himself or itself out as engaging in or conducting a barber shop, school or college, unless first licensed so to do by the board of barber examiners. Every barber school, or college, operating within the state of Montana must be in charge of a person who has had ten (10) years continuous experience as a barber, providing that the owner of such school, or college shall first secure from the board of barber examiners a permit to operate on payment of an annual license fee of fifty dollars (\$50.00), and shall keep said permit prominently displayed, and shall, before commencing business file with the secretary of state a bond to the state of Montana, which bond shall be approved by the attorney general, in the sum of two thousand (\$2,000.00) dollars conditioned upon the faithful compliance of said barber school, or college, with all the provisions of chapter 127, session laws of 1929 as amended; and to pay all judgments that may be obtained against said schools, or colleges, or the owners thereof on account of fraud, misrepresentation or deceit practiced by them, or by their agents; provided, further, that all barber schools, or colleges shall keep prominently displayed a substantial sign as a barber school, or barber college. Provided, further, that all barber schools, or colleges, upon receiving students shall immediately apply to the board of barber examiners for student permits upon blank forms provided by the board of barber examiners for such purposes.

An application for a barber shop, school or college license shall be in writing and verified on a form provided by the board of barber examiners. Upon receipt of an application for a license hereunder, and upon payment of the initial inspection fee, said board of barber examiners shall cause an investigation and inspection to be made as to the character of the applicant, and upon proper notice and after proper hearing shall report its findings to the secretary of the board of barber examiners, who shall grant a license, if the board of barber examiners finds that the applicant is of good character, and that the proposed barber shop, school or college is equipped and will be conducted as required by this act. Every application must be granted or refused within thirty (30) days from the date of filing

of such application or within fifteen (15) days after the close of the hearing upon the application in case a hearing is held.

E. No barber shop license shall be issued in this state to anyone except one who holds a regular valid barber's certificate as provided for by this act, and no barber shop shall be maintained or conducted in this state except by one who holds a barber shop license issued by the board of barber examiners as provided by this act, and this certificate shall not be transferable as to person or place.

F. Before a license is issued to conduct a barber shop, school or college which shall be established in this state on or after the date this act goes into effect, such barber shop, school or college must be inspected and approved by the board of barber examiners and shall meet with the following requirements: (1) Must have both hot and cold running water connected with city water supply. In villages or towns where running water is not available, hot water tanks shall have not less than two (2) gallon capacity with gravity pressure. Waste water shall be disposed of through some system, carrying it away from the building. This shall be done by sewer connections, or in a manner meeting with the requirements of the state department of health rules and regulations, city ordinances, and having the approval of the city or village board of health, as required by law. (2) The head-rest of every barber chair must be equipped so that each customer will be supplied with clean fresh paper or towel before its use for any person. (3) Must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer. (4) Must have sufficient number of towels so that each customer will be served with a clean laundered towel. (5) Must be well lighted, well ventilated, and kept in a clean, orderly and sanitary condition at all times. (6) Must pay to the board of barber examiners the required fee.

G. All barber shops, barber schools or colleges shall be open for inspection at any time during business hours, to any member of the board, or its agents or assistants, and it shall be the duty of every owner or manager of a barber shop licensed under this act to make certain that each barber employed therein holds a certificate to practice barbering in Montana, and that all employees observe the sanitary rules of the state department of health and the board of barber examiners and report to the board of barber examiners the name of any person practicing barbering therein, who has a communicable disease.

H. The board of barber examiners may either refuse to issue or renew, or may suspend or revoke any barber shop or barber school or college license for any one or combination of the following causes: (1) the violation of any of the provisions of subdivisions 1, 2, 3, 4, and 5 of subsection F of this section, subsection G of this section, and section 3228.23 of this act; (2) conviction of a felony, shown by a certified copy of the record of the court of conviction; (3) gross malpractice or gross incompetency; (4) continued practice by a person knowingly having an infectious or contagious disease; (5) advertising by means of knowingly false or deceptive statements; (6) advertising, practicing or attempting to practice under a trade name other than one's own; (7) habitual drunkenness or habitual addiction

to the use of morphine, cocaine, or other habit-forming drugs; (8) the commission of any of the offenses described in section 3228.27 of this act.

I. Any applicant whose license has been refused, suspended or revoked by the board of barber examiners under this act may within ten (10) days of such action file a petition in the district court in the county in which the applicant resides. The licensee shall be named as plaintiff and the board of barber examiners as defendant. Said court shall have jurisdiction after notice to the board of barber examiners to hear and determine said petition in a summary manner, and to reverse, vacate or modify the order of the board of barber examiners complained of, if upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable. The trial of the district court upon such an appeal shall be de novo. The decision of the board of barber examiners shall not be stayed by the proceedings on appeal and such appeal shall not operate to restore the right of the licensee to operate a barber shop pending such appeal. The attorney general shall defend said action of the board of barber examiners on behalf of the state; but the county attorney of the county where the petition is filed, at the request of the attorney general, shall appear and defend such action. [As amended Sec. 3, Ch. 183, L. 1937; Amd. Sec. 1, Ch. 150, L. 1939.]

NOTE.—Chapter 127 of the 1929 Session Laws referred to above became sections 3228.19-3228.30, R. C. M., 1935.

3228.22. Present practitioners. Any person engaged in the practice of barbering in this state at the time this act goes into effect, provided he furnish a satisfactory physician's certificate, approved by the state board of health, shall be granted a certificate of registration as registered barber without other examination, provided further that such person shall apply for a certificate on or before August 1, 1929.

Any barber shop, school or college established, maintained and operated in this state prior to the date this act goes into effect, provided its owner or manager furnish satisfactory evidence of compliance with the laws heretofore governing barber shops, schools or colleges in this state, shall be granted a license, provided further, that such owner or manager shall apply for such license and pay the required fee on or before May 31, 1939. Any change in the ownership or management of a barber shop, school or college, on or after the date this act goes into effect, whether by sale or otherwise, shall render such barber shop, school, or college subject to all the provisions of section 3228.21 and section 3228.23 of this act. [As amended Sec. 2, Ch. 150, L. 1939.]

3228.23. Display of certificate and license. Every holder of a certificate of registration shall display it in a conspicuous place, adjacent to or near his or her work chair.

Every license to operate a barber shop, school or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barber shop, school or college. No barber shop, school or college shall be conducted or held forth as being conducted under any name except the name appearing as licensee on the license issued by the board of barber examiners.

Every barber shop shall display a schedule of prices in a conspicuous place. [As amended Sec. 3, Ch. 150, L. 1939.]

3228.27. Powers and duties. The board of barber examiners shall conduct practical examinations of applicants for certificates of registration to practice as registered barbers, not less than four (4) times each year at such times and places as the board of barber examiners may determine. Said examination shall cover the fundamentals of barbering, dermatology and sanitation. The board of barber examiners shall issue all certificates of registration. The board of barber examiners may, at its discretion, appoint inspectors with authority to inspect barber shops, their compensation to be the same as provided for members of the board of barber examiners while engaged in said duties.

The board of barber examiners shall have power to approve price agreements, establishing minimum prices for barber work, signed and submitted to the board of barber examiners by any organized group or groups of at least 75 per cent of the barbers in any city or town, within the state of Montana, should the board of barber examiners, after ascertaining by such investigations and proofs as the condition permits and requires, find that such price agreement is just and under varying conditions will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances so as to minimize the danger to the public health incident to such work. For the purpose of this act, a city or town shall be deemed to include, in addition to the territory within its legal limits, the territory adjacent to it and lying within three miles of said legal limits. In determining whether any such price agreement is just and will best protect the public health and safety, the board shall take into consideration all conditions affecting the barber business in its relation to the public health and safety.

In determining reasonable minimum prices the board of barber examiners shall take into consideration the necessary cost incurred in the city or town in maintaining a barber shop in a clean, healthful and sanitary condition.

The board of barber examiners, after making such investigation, shall fix by official order the minimum price for all work usually performed in a barber shop within the city or town in which such price agreement has been signed. The board of barber examiners may upon the petition of 50% of the barbers of the said city or town readjust the minimum prices and such new prices must be approved by 75% of the barbers in the city or town providing that any apprentice barber shall charge not less than 50% of the approved price in the said city or town. Provided, further, that this section shall not apply to students who have been enrolled less than six months in any barber college in the state of Montana or until they become apprentice barbers.

The board of barber examiners shall have authority to make necessary rules and regulations for the administration of the provisions of this act not inconsistent with this act nor the laws of the state. [As amended Sec. 4, Ch. 150, L. 1939.]

3228.28. Penalty. Any person practicing the occupation of a barber without first having obtained a license, as provided in this act, or any person knowingly employing a barber who has not obtained such a license, or any person who falsely pretends to be qualified to practice such occu-

pation under this act, and any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars, or imprisonment in the county jail for not less than ten (10) days nor more than ninety (90) days, or both. In addition to the penalty hereinbefore prescribed, the board of barber examiners may, after hearing, suspend or revoke any barber's certificate of registration, or license to operate a barber shop, school or college, or both by reason of any person wilfully violating this act or persistently failing to conform to the lawful rules and regulations promulgated by the board of barber examiners. [As amended Sec. 5, Ch. 150, L. 1939.]

3228.29. Fees to be paid by apprentices, students, barbers and barber shops. A. The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be fifteen (\$15.00) dollars, and for the issuance of said certificate an additional three (\$3.00) dollars. The fee to be paid by an apprentice or student for a certificate of registration shall be the sum of three (\$3.00) dollars.

B. Each person registered as a barber, or barber apprentice, shall on or before the first day of July of each year pay a license fee of three (\$3.00) dollars for the renewal of his or her certificate of registration, and if any barber, or barber apprentice, shall fail to have such certificate renewed on or before the first day of August of each year such barber, or barber apprentice, shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee, of five (\$5.00) dollars, in addition to the regular fee of three (\$3.00) dollars provided for herein, and if a certificate of registration is not renewed within one year after date of expiration thereof, such barber, or barber apprentice, shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a six (6) months course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

E. In addition to the fees and charges now provided by existing law, all barber shops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of one (\$1.00) dollar. Barber shops hereafter established shall pay an initial inspection license fee of fifteen (\$15.00) dollars for the first year or portion thereof, and shall pay an annual license fee of one (\$1.00) dollar for each calendar year thereafter.

F. All barber shops, schools or college licenses shall expire on the 31st day of May of each year, following the issuance of said license, and every owner or manager of a barber shop, school or college which continues in

active operation shall annually, on or before May 31st renew his barber shop, school or college license and pay the required fee.

Every barber shop, school or college license which has not been renewed during the month of May in any year shall expire on the 31st day of May in that year, and for the restoration of an expired barber shop license the fee shall be ten (\$10.00) dollars, and for an expired barber school or college license, the fee shall be fifty-five (\$55.00) dollars. [As amended Sec. 4, Ch. 183, L. 1937; Amd. Sec. 6, Ch. 150, L. 1939.]

3228.30. Registration of barbers required—operating without license unlawful. After June 1, 1939, no person shall practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice without first having received from the board of barber examiners a certificate of registration.

After June 1, 1939, it shall be unlawful to operate a barber shop, school or college unless it has first been duly licensed by the board under the provisions of this act. [As amended Sec. 7, Ch. 150, L. 1939.]

3228.31. Invalidity of part of act, effect of. If any portion of this act is declared unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of the act which can be given effect without the invalid portion. [En. Sec. 8, Ch. 150, L. 1939.]

CHAPTER 278, PUBLIC ACCOUNTING— REGULATION OF PRACTICE

3241.1. Certified public accountants—qualifications—examination. The certificate of "certified public accountant" shall be granted by the state university of Montana (hereinafter referred to as the university) to any person who is (a) a citizen of the United States or who has duly declared his or her intention of becoming such citizen, and who is and has been a resident of the state of Montana for at least one (1) year prior to the date of his application, and (b) who is over the age of twenty-one (21) years, and (c) who is of good moral character, and (d) who is a graduate of a high school with a four (4) years' course or has had an equivalent education, or who, in the opinion of the board, has had sufficient commercial experience in accounting so that, in the judgment of the board, the requirement of a four-year high school course or equivalent education may be waived, and (e) who shall have successfully passed examinations in the theory and practice of general accounting, in auditing, in commercial law as affecting accountancy, and in such other related subjects as the board of accountancy may deem advisable. [As amended Sec. 1, Ch. 106, L. 1937.]

CHAPTER 281, THE LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE, INSPECTION AND DESTRUCTION OF DISEASED STOCK

3277. Sale of condemned carcasses—disposal of proceeds. Where a carcass or carcasses of animals ordered destroyed by this act are found, upon official post-mortem inspection, to be fit for human consumption, the owner shall receive the net proceeds from the sale of such carcass or car-

casses, which proceeds shall be deducted from his claim against the state and county on account of such slaughter. The representative of the livestock sanitary board, may, when considered advisable or necessary or when it is desired by the owner, proceed to sell the carcass or carcasses upon such terms as shall to him seem to the best interests of the state, and the net proceeds obtained therefrom shall be paid to the owner, but such procedure shall not invalidate the owner's claim for indemnity for any balance due him as provided by law. [As amended Sec. 1, Ch. 177, L. 1937.]

3277.1. Rules and regulations—agreement with federal government. Whenever it is determined by the livestock sanitary board that it is necessary to eradicate or control any infectious, contagious, communicable or dangerous disease of livestock in the state, in cooperation with the United States bureau of animal industry or other federal agency and to appraise and destroy animals affected with, or which have been exposed to such disease, or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises, or to do any act or incur any other expense reasonably necessary in suppressing such disease, the board may accept and adopt on behalf of the state, the rules and regulations adopted by the United States bureau of animal industry or other federal agency under authority of an act of congress, or such portion thereof deemed necessary, suitable or applicable, and adopt such other rules and regulations as it deems necessary or desirable for this purpose, and to cooperate with the United States bureau of animal industry or other federal agency in the enforcement of such rules and regulations so accepted and adopted. [En. Sec. 2, Ch. 177, L. 1937.]

CHAPTER 284, BUTCHERS AND MEAT PEDDLERS—REGULATION

3298.19. Inspection of hides before disposal—person slaughtering cattle must exhibit hides. Every person or persons, firm, corporation or association, slaughtering cattle for their own use, must before selling, destroying or otherwise disposing of the hide or hides from such cattle, have the same inspected by an officer authorized to make such inspection and secure a certificate of inspection as hereinbefore provided for. It shall be unlawful for any person or persons, firm, corporation, or association to sell, offer for sale, destroy or otherwise dispose of any hide or hides from slaughtered cattle which have not been inspected and identified by an authorized inspector. And it shall be the duty of any person or persons, firm, corporation, or association slaughtering cattle, for his own use or otherwise, upon demand of an authorized inspector, to exhibit the hide or hides of such animal or animals for inspection or duplicate bill of sale issued by a hide buyer, or some evidence of inspection by an authorized inspector. [As amended Sec. 1, Ch. 47, L. 1939.]

CHAPTER 285, RECORDING OF MARKS AND BRANDS—VENTING BRANDS—MORTGAGES OF LIVESTOCK

3300. Venting brands.

The purpose of section 3300, Revised Codes, requiring the venting or counter-branding of livestock upon transfer thereof is to protect persons in their honest

dealings with relation thereto, and since it is not necessary for the state to show, in a prosecution for larceny of animals, legal title thereto in the prosecuting wit-

ness so far as record ownership thereof is concerned, the trial court did not err in refusing to give defendant's offered instruction based on the provisions of that section. State v. Akers, 106 M 43, 56, 74 P 2d 1138.

CHAPTER 287, INSPECTION OF HORSES AND CATTLE BEFORE REMOVAL FROM THE STATE

3321. Inspection of cattle to be removed from state. It shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, calf, horse or mule, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the state as hereinafter provided; provided, however, that whenever any of the class of stock aforementioned shall be loaded for shipment with any railroad company and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this state before shipment. [As amended Sec. 1, Ch. 136, L. 1937.]

3322. Duties of stock inspector. On receiving notice from any person that he desires to remove from this state to be sold or used outside of the state any of the class of animals mentioned in the preceding section, it shall be the duty of any stock inspector to whom such is given, to inspect said animals, carefully noting all of the brands and marks upon same, and make a report of such inspection to the secretary of the board of stock commissioners, which said report shall show the date of such inspection, the name and address of the person taking said animals from the state, the destination of the shipment, the marks and brands upon each animal together with the number of animals listed under each brand; and if in the opinion of the stock inspector the person proposing to remove the same, is rightfully in possession of the animals inspected, he shall grant such persons a certificate of inspection, containing the matter herein provided, with the further statement that permission is granted said person to remove such animals from the state. The person receiving said certificate must, if shipment is made by railroad, deposit it with the railroad agent at the point from which said shipment was made, which certificate must be filed by the agent and must be at all times during business hours accessible to the public, and the agent must at the time of filing said certificate indorse upon it the date of its receipt and filing by him; if shipment is made other than by railroad, the person receiving said certificate must retain the same until the animals are sold or delivered, after which, it shall be forwarded to the livestock commission with a verified statement attached thereto, showing the name and address of the person, firm or corporation to whom the animals were sold or delivered. If, however, any stock inspector making such inspection shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove same from this state, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock. [As amended Sec. 2, Ch. 136, L. 1937.]

3322.1. Fees for inspection. For the service of inspection herein provided for, the officer making such inspections shall receive twenty-five

cents (25c) per head for the inspection of twelve head or less, or three dollars per day for the inspection of more than twelve head, and shall receive in addition thereto, his necessary actual expenses, to be paid by the person for whom the inspection is made, in the case of cattle or horses shipped to points other than those markets where the Montana livestock commission maintains a stock inspector. For the service of inspection herein provided for at points not within the state where the livestock commission maintains a stock inspector the fee authorized by the packers and stock yards act, 1921, (U. S. C., title 7, Sec. 181-229), may be collected by the stock inspector making such inspection. All fees so collected shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund. [En. Sec. 3, Ch. 136, L. 1937; Amd. Sec. 1, Ch. 87, L. 1939.]

3323. Penalty for violation of act. Any person removing or attempting to remove any livestock of the kind named in section 3321 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad, other carrier or person accepting for shipment any such livestock, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, and any person who shall load any of such stock for shipping and consign same to any point where the livestock commission maintains a stock inspector, and who shall then reconsign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act, fifty (50%) per cent thereof shall be turned into the state treasury, and placed to the credit of the livestock commission fund and fifty (50%) per cent to the credit of the county in which the livestock shipment originated or from which the livestock were taken, except that all fines collected where arrest is made by highway patrolmen, or upon information furnished by highway patrolmen, in which event, fifty (50%) per cent of such fines be deposited to the credit of the general fund of the county from which the livestock shipment originated or from which the livestock were taken, and the other fifty (50%) per cent be paid into the state treasury to be placed to the credit of the highway patrol revolving fund. [As amended Sec. 4, Ch. 136, L. 1937.]

CHAPTER 288, INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM ONE COUNTY TO ANOTHER

3324. Inspection of livestock. From and after the passage of this act, it shall be the duty of any and all persons, associations or corporations removing or taking any cow, ox, bull, stag, heifer, steer, calf, horse, mule, mare, colt, foal, or filly from one county to another to cause the same to be inspected at point of loading for brands, by a state stock inspector, and no railroad company, other carrier or person shall accept such livestock

for shipment, unless the shipper shall produce a certificate of their inspection for brands as herein required; (provided, however, that the provisions of this act shall not apply to the said stock when driven by the owner from one county to another for the purpose of pasturing, feeding or changing the range thereof, nor to any stock so removed or taken from one county to another by any person, association or corporation, when such stock is used in the ordinary conduct of his or its business, and such person, association or corporation has been the owner of said stock to be removed for at least three months); and, provided further, that whenever any of the class of stock aforementioned shall be loaded for shipment with any railroad company and be consigned to any point where the state board of stock commissioners maintain a stock inspector, and where loading tally is filed as required in section 3341, then such shipments so consigned, need not be inspected before shipment.

If shipment is made other than by railroad, the person receiving said inspection certificate must retain the same until the animals are sold or delivered, after which it shall be forwarded to the livestock commission with a verified statement attached thereto, showing the name and address of the person, firm or corporation, to whom the animals were sold or delivered. [As amended Sec. 1, Ch. 133, L. 1937; Amd. Sec. 1, Ch. 85, L. 1939.]

3326.1. Fees for inspection. For the service of inspection herein provided for, the officer making such inspections shall receive twenty-five cents per head for the inspection of twelve head or less, or three dollars per day for the inspection of more than twelve head, and shall receive in addition thereto his necessary actual expenses, to be paid by the person for whom the inspection is made. [En. Sec. 2, Ch. 133, L. 1937.]

3327. Penalty for violation of act—disposal of fines. Any person removing or attempting to remove any livestock of the kind named in section 3324 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad, other carrier or person accepting for shipment any such livestock, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, and any person who shall load any of such stock for shipping and consign same to any point where the livestock commission maintains a stock inspector, and who shall then reassign them enroute to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act, fifty (50%) per cent thereof shall be turned into the state treasury, and placed to the credit of the livestock commission fund, and fifty (50%) per cent to the credit of the county in which the livestock shipment originated or from which the livestock were taken, except, that all fines collected where arrest is made by highway patrolmen, or upon information furnished by highway patrolmen, in which event fifty (50%) per cent of such

finer be deposited to the credit of the general fund of the county from which the livestock shipment originated or from which the livestock were taken, and the other fifty (50%) per cent be paid into the state treasury to be placed to the credit of the highway patrol revolving fund. [As amended Sec. 3, Ch. 133, L. 1937.]

CHAPTER 289-A, LIVESTOCK MARKETS

3332.1. Establishment of livestock markets. Any person upon making to the livestock commission of the state of Montana, a written statement satisfactory to said commission, of financial responsibility, and of ownership or control of adequate facilities for the care, sorting, feeding, loading, unloading, and shipment of livestock for the operation of a livestock market, and tendering the fee and furnishing the bond prescribed herein, may secure a license from the said commission, to establish and operate within the state of Montana for one year, a livestock market as hereinafter defined. The operation of a livestock market in this state without such license is a penal offense, punishable as hereinafter prescribed. [En. Sec. 1, Ch. 52, L. 1937.]

3332.2. Definitions—when used in this act. a. The term "livestock" shall mean and include horses, mules, cattle, swine, sheep and goats.

b. The term "livestock market" shall mean a place where a person, partnership or corporation shall assemble livestock for either private or public sale. Such service is to be compensated for by owner, on a commission basis, except: (1) Any place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business and no other livestock is there sold or offered for sale: (2) Any farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale: (3) The premises of any butcher, packer, or processor who received animals exclusively for immediate slaughter: (4) The premises of any person, firm, or corporation engaged in the raising of livestock for breeding purposes only, who limits his or its sales to animals of his or its own production: (5) Any place where an association of breeders of livestock of any class assemble and offer for sale and sell under their own management any livestock, who assume all responsibility of such sale and the title of livestock sold.

c. The term "person" shall mean and include all persons, co-partnership, association, or corporation. [En. Sec. 2, Ch. 52, L. 1937.]

3332.3. License—fee—renewal—application. After May 1, 1937, no person shall engage in the operation of a livestock market within the state of Montana without first procuring a license from the livestock commission, and paying therefor a fee of one hundred dollars (\$100.00). Said license may be renewed to eligible applicants prior to May first of each calendar year thereafter, upon regular application for, and payment of the regular fee. An application for a license to establish and operate a livestock market shall be in writing upon a blank form to be furnished and containing such information as shall be required by the livestock commission, and shall be accompanied by the fee above described. If the livestock commission does not issue a license or renewal, the fee must be returned to the applicant. [En. Sec. 3, Ch. 52, L. 1937.]

3332.4. Bond—conditions—filing—actions. No license or renewal of license to establish and operate a livestock market within the state of Montana shall be issued until the applicant shall have executed to the state of Montana, a bond in the penal sum of ten thousand dollars (\$10,000.00), upon a form prescribed by the livestock commission, with surety to be approved by the commission, conditioned upon the payment of all money received, less reasonable expenses and agreed commissions by the licensee and operator of such livestock market to the rightful owner or owners of livestock so consigned and delivered to such licensee for sale forthwith upon the sale of such livestock, and also a full compliance with all of the terms and requirements of this act, and the acceptance and approval of said bond by the livestock commission, and the approval thereof as to form by the attorney general of Montana. When so approved said bond shall be filed with the secretary of the livestock commission. Actions of law may be brought in the name of the state upon any such bond for the use and benefit of any person who may suffer loss or damage from violations thereof, and may be brought by any such person suffering loss or damage in the county of his residence. Copies of any such licenses and bond certified by the secretary of the livestock commission may be procured upon payment of the fee of one dollar (\$1.00) each and shall be received as competent evidence in any court of the state of Montana. [En. Sec. 4, Ch. 52, L. 1937.]

3332.5. Posting licenses. A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar (\$1.00) therefor, and the original or certified copy of said license shall be posted during sale periods in a conspicuous place on the premises where the livestock market is conducted. [En. Sec. 5, Ch. 52, L. 1937.]

3332.6. Rules and regulations. The livestock commission or the livestock sanitary board may adopt any such rules and regulations as it may deem necessary in the administration of this act. [En. Sec. 6, Ch. 52, L. 1937.]

3332.7. Cancellation or suspension. Any violation of the provisions of this act, or of any of the conditions of the bond, or of any rules or regulations adopted and published by the livestock commission or any violation of the laws of the state of Montana including the laws requiring the inspection of horses and cattle as contained in Chapter 287, sections 3317-3323.2 and chapter 288, sections 3324-3327.2 of the political code of the Revised Codes of Montana 1935, shall be deemed a sufficient cause for the cancellation of the license of the offending operator of such livestock market. The following shall also be specific grounds for cancellation of such license:

a. If the Montana livestock commission find that such licensee has been guilty of fraud or misrepresentation as to the titles, brands or ownership. [En. Sec. 7, Ch. 52, L. 1937.]

3332.8. Records required. Each licensee shall keep such accounts, records, and memoranda, and shall make such reports as may from time to time be required by the livestock commission, and the said commission shall at all times have access to such accounts, records and memoranda. [En. Sec. 8, Ch. 52, L. 1937.]

3332.9. Investigations and hearings. The livestock commission, or any member thereof, or the secretary of the livestock commission, may upon their

own motion, or upon verified complaint in writing of any person, whenever they or either of them deem it necessary, shall investigate the actions of any licensee, and if they or either of them find it proper to do so, shall file complaint against the licensee with the livestock commission, and said complaint shall be set down for hearing before said commission upon ten (10) days' notice served upon such licensee either by personal service upon him or by registered mail or by telegram prior to such hearing.

The livestock commission shall have power to administer oaths, certify to all official acts and shall have the power to subpoena and bring before them any person in this state as a witness, compel the producing of books and papers and to take the testimony of any person or deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Process issued by the commission shall extend to all parts of the state and may be served by any person authorized to serve process. Each witness that shall appear by the order of the commission shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases appearing in the district court, which amounts shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but subpoenaed by the commission, his fees and mileage shall be paid in the same manner as other expenses of the said department are paid. [En. Sec. 9, Ch. 52, L. 1937.]

3332.10. Appeal. If the commission shall refuse to grant an application for a license or shall suspend or revoke a license and the licensee shall feel aggrieved by the decision of the commission, he may appeal to the district court of the county in which he has his principal place of business, by giving notice of such appeal in writing to the commission and filing a bond with the clerk of the district court in the sum of three hundred dollars (\$300.00) to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, said bond and notice and a transcript of the complaint, pleadings, notices, motions and other papers filed in the cause with the commission, certified by the secretary of the livestock commission, to be filed within ten (10) days from the date of the decision of the commission. Cost of preparing such transcript shall be paid by appellant. The filing of such notice and bond shall supersede the order of the commission until the final determination of the appeal. The judge of the court shall summarily hear and determine the questions involved in said appeal and shall receive and consider any pertinent evidence whether oral or documentary concerning the matter. If the aggrieved person should fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. Appeals from judgments of the district court may be taken to the supreme court in the same manner as appeals are taken in civil actions. [En. Sec. 10, Ch. 52, L. 1937.]

3332.11. Title of livestock warranted—doubtful ownership. The operator of each livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for such livestock so sold, and it shall be the further duty of such operator when notified by the authorized brand inspector, that there is a question as to whether any designated livestock sold through such market is lawfully

owned by the consignor thereof, to hold the proceeds received from the sale of said livestock for a reasonable time not to exceed sixty (60) days, to permit the consignor to establish ownership, and if at the expiration of that time, the consignor fails to establish his lawful ownership of such livestock, said proceeds shall be transmitted by such operator to the secretary of the livestock commission, which secretary shall have authority to dispose of such proceeds in accordance with chapter 290, sections 3333-3334 of the political code, Revised Codes of Montana 1935, relating to the distribution of estray money, and the secretary's receipt therefor shall relieve said operator from further responsibility for said proceeds. Proof of ownership and account of all sales of livestock shall be transmitted by the authorized brand inspector to the secretary of the livestock commission. [En. Sec. 11, Ch. 52, L. 1937.]

3332.12. Disposition of fees. All fees collected by the commission under the provisions of this act shall be paid into the state treasury monthly and shall be credited to the livestock commission fund. [En. Sec. 12, Ch. 52, L. 1937.]

3332.13. Dispersal sales. All dispersal sales made at livestock markets shall meet the requirements prescribed for other livestock passing through such market. [En. Sec. 13, Ch. 52, L. 1937.]

3332.14. Penalty for violation of act. Any person who shall violate any provisions or requirement of this act or rule or regulation adopted by the livestock commission pursuant to this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00) or by imprisonment in the county jail for a period not less than thirty (30) days or by both such fine and imprisonment. Every person who having been convicted of a violation of this act shall after such violation of any of the provisions of this act again be found guilty of a violation as aforesaid shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment. [En. Sec. 14, Ch. 52, L. 1937.]

CHAPTER 291, HIDES OF SLAUGHTERED CATTLE—REGULATIONS—HIDE DEALERS' LICENSE

3350.1. Hide buyers to procure a bill of sale—contents of bill of sale—inspection of hides compulsory. Any person, firm, association or corporation who shall purchase or receive any hide or hides of cattle or of any horse, mare, colt, mule, jack, or jenny, shall obtain from the owner thereof or from his legally authorized agent, at the time of purchasing or receiving the same, a bill of sale in writing, which bill of sale shall recite in full the date of receiving the hide or hides, the name of the person, firm, association or corporation selling such hide or hides, a description of each hide which shall include the marks and brands on each hide and which shall be in the following form:

BILL OF SALE _____, Montana.
This is to certify that _____ have this _____
day of _____, 19____, sold to _____

hides or pelts described below, for and in consideration of the sum of
dollars \$.....

COLOR	BRAND	POSITION	TAG NUMBER
.....
.....
.....
.....

As prescribed by the laws of the state of Montana, I have affixed tag or tags, as shown above to the individual described hides in the presence of the seller.	The tag or tags numbered as shown above were affixed to the above described hides in my presence and I guarantee to the buyer title to said hides.
..... Buyer. Seller.

..... P. O. Address and County P. O. Address and County
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and shall keep a permanent record of all such purchases. Such bill of sale forms shall be furnished by the Montana livestock commission to the said buyer, at actual cost of printing, mailing and handling, and may be obtained by the said buyer from any sheriff of the state.

On purchasing any hide or hides of a seller thereof, the buyer at the time of the purchase shall make a record thereof in triplicate on the bill of sale as aforesaid, filling out in detail the data required, which bill of sale shall then and there be signed by the buyer and seller. One copy of such bill of sale shall be retained by the seller, one copy retained by the hide buyer, and the original copy shall be filed in the office of the clerk and recorder of the county of sellers residence, without cost. At the time of the sale the buyer shall securely affix in each hide a numbered lead seal, the form of which shall be specified by the livestock commission. Each seal shall bear the number assigned to the county by the livestock commission. Such seals shall be furnished by the county and shall be procured from the sheriff of the county of the sellers residence, and the sheriff shall keep an accurate record in a bound book furnished by the county of all seals procured from him. The number of the tag in the bill of sale shall correspond with the number on the lead seal so attached. Thereupon and prior to removing the hide from the county of the transaction, which shall be the seller's county of residence, the buyer shall forthwith submit all hides purchased for inspection to the sheriff of the county or his deputy, or to any person designated by the board of county commissioners, or the livestock commission, who shall inspect such hide or hides and issue a certificate of inspection in such form as may be required by the Montana livestock commission and such inspector shall issue to the hide buyer a certificate of inspection and shall file without cost a duplicate in the office of the clerk and recorder of the county of the seller's residence and shall retain a duplicate for his own records, except that no inspection or tag shall be required in the case of hides which have already been inspected and marked, or tagged, as provided for in chapter 284, political code, Revised Codes of Montana, 1935.

Provided, however, that no delivery of any hide or hides shall be made as between the seller and hide buyer in any county other than the county of seller's residence, unless and until the hide or hides have been inspected by an inspecting officer as herein mentioned, in the county of seller's residence.

Provided, further, that if the animal or animals from which such hide or hides have been taken have been killed or butchered in a county other than that wherein seller resides then such inspection and delivery may be had in either of said counties, but such certificate must be filed in the county of seller's residence as hereinbefore provided. [As amended Sec. 3, Ch. 177, L. 1939.]

3350.2. Falsifying bill of sale of hides deemed a misdemeanor. Any person, firm, association, or corporation either selling or disposing of or purchasing hides in any manner, who shall wilfully or intentionally falsify the bill of sale covering such hides, shall be deemed guilty of a misdemeanor and shall be punished as provided by section 3350.12. [As amended Sec. 4, Ch. 177, L. 1939.]

3350.3. Penalty for violations. [Repealed Sec. 9, Ch. 177, L. 1939.]

3350.7. Hide buyer defined. For the purpose of this act, every person, firm, corporation or association engaged in the business of buying or selling the hide or hides of any cattle or of any horse, mare, colt, mule, jack, or jenny, shall be designated a hide dealer or buyer. [As amended Sec. 1, Ch. 177, L. 1939.]

3350.8. Hide dealer or buyers license fee—disposal of proceeds. Every hide dealer or buyer, before engaging in, or conducting any business as such, in any county, shall pay to the county treasurer of such county a license fee of one (\$1.00) dollar, which license shall continue in force and effect for that calendar year. The county treasurers of the state are hereby authorized and required, upon payment of any such license fee, to issue a proper certificate of such payment. The moneys collected from such licenses shall be placed in the general fund of the county wherein collected. [As amended Sec. 2, Ch. 177, L. 1939.]

3350.9. Inspection and marking of hides sold. [Repealed Sec. 9, Ch. 177, L. 1939.]

3350.10. Inspection tags to be on purchased hides. It shall be unlawful for any person, firm, association or corporation to purchase the hide or hides of any horse, mare, colt, mule, jack or jenny, or cattle which does not bear the inspection tag placed on such hide by an inspector as herein provided or by the buyer at time of purchase. [As amended Sec. 5, Ch. 177, L. 1939.]

3350.11. Unlawful for carriers to transport uninspected and untagged hides. It shall be unlawful and a misdemeanor punishable as provided in section 3350.12, for any railroad company, express company or other common carrier to accept for shipment or transport any hide or hides, as referred to in this act, unless such hide or hides has affixed thereto the lead tag or seal provided in this act or the mark or tag as provided by section 3298.18, Revised Codes of Montana, 1935, and each shipment must be accompanied by an itemized list prepared by the shipper, to accompany the bill of lading showing the number and kinds of hides and giving the brand or brands on each hide and the serial number and the county as given on the lead tag.

Provided, however, that in case of shipment of hides out of the state of Montana in carload or truckload lots the tags or seals may be removed at the time of shipment and no itemized list need accompany the bill of lading. [As amended Sec. 6. Ch. 177, L. 1939.]

3350.15. Fees for inspection. Hide inspectors may collect a fee, not to exceed ten cents (10c) for each hide inspected, which fee shall be retained by the said inspector. [En. Sec. 7, Ch. 177, L. 1939.]

3350.16. Penalty. Any person or persons, firm, association, company or corporation who shall fail to comply with the provision of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as provided by section 3350.12, Revised Codes of Montana, 1935. [En. Sec. 8, Ch. 177, L. 1939.]

CHAPTER 294-A, STOCK LANE LAW

3383.1. Title of act. This act shall be known as the "stock lane law". [En. Sec. 1, Ch. 63, L. 1939.]

3383.2. Stock lane defined—width. Within the meaning of this act a stock lane shall be deemed to be a public highway established and maintained for the driving of and travel of livestock thereon. The width of such highway shall be determined by the order or orders of the county commissioners creating the same and shall be not less than sixty (60) feet in width. [En. Sec. 2, Ch. 63, L. 1939.]

3383.3. Laws relating to establishing highways made applicable. The provisions of sections 1635 to 1651 inclusive of the Revised Codes of Montana, 1935, and the general laws of this state relating to the establishing, altering and vacating of public highways including the right of exercise of the power of eminent domain shall likewise apply to stock lanes except that such highways in all petitions, orders and proceedings shall be referred to as "stock lanes" to differentiate them from other highways. [En. Sec. 3, Ch. 63, L. 1939.]

3383.4. Commissioners' power concerning stock lanes—adjoining highway. The power to establish, alter or vacate stock lanes shall belong exclusively to the county commissioners of the respective counties, to be exercised when they deem it expedient and necessary for the convenience of the public, and when they deem it to be for the convenience of the travel of the public on highways now established. Any such lane established may adjoin and parallel a public highway and shall be described in the petition for the creation of and the order of the county commissioners creating the same. [En. Sec. 4, Ch. 63, L. 1939.]

CHAPTER 301, PAYMENT FOR CONSIGNMENTS OF ORE— PURCHASERS FROM LEASED MINES

3444.1. Sampling works and smelters to mail statement to lessee. That all sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought or treated from lessors of mines, to the lessee or lessees of the mine or mining claim from which the same shall have been extracted at the same time such

statement is furnished to the lessor of said mine or mining claim or shipper of such ore. [En. Sec. 1, Ch. 17, L. 1937.]

3446. Smelters—penalty for violation. Any person or corporation operating any sampling works, or smelter, within this state who shall violate any of the provisions of sections 3444 and 3444.1 of this code shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than fifty (\$50.00) dollars, nor more than one hundred (\$100.00) dollars. [As amended Sec. 2, Ch. 17, L. 1937.]

CHAPTER 302, REGULATION OF COAL-MINING INDUSTRY

3486. Mine operators to furnish wash houses for employees. It shall be the duty of the owner, operator, or superintendent of any coal mine in the state of Montana to provide a suitable building, not an engine or boiler house, for the use of the persons employed in such mine, for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall not be over eight hundred feet from and convenient to the principal entrance of such mine when practicable to do so. When not practicable to build the wash house within the said distance and still conform to the other requirements of this section, the state coal-mine inspector may give written permission to place the building at a greater distance from the mine than that herein specified, and the operator shall not be guilty of violation of this section. The said building shall be kept sanitary, maintained in good order, be properly lighted and heated, and supplied with good, clean cold and warm water, and be provided with facilities for persons to wash and a suitable locker or other facility for each person to be used by him as a repository for his usual clothes and personal effects for the loss of which by fire, the operator shall be liable for the value of such aforementioned personal property to an amount not to exceed a total sum of twenty-five dollars (\$25.00), for each individual employee. Provided this section does not apply where the number of employees does not exceed twelve (12) actually engaged in the mining of coal.

If any person shall maliciously injure or destroy, or cause to be injured or destroyed, the said building or any part thereof, or any of the appliances or fittings used for supplying light, heat, or water therein, or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this act and subject to a fine as hereinafter provided for. [As amended Sec. 1, Ch. 146, L. 1937.]

3501. Ventilation of mines. The owner, operator or superintendent of every coal mine, whether operated by shaft, slope or drift, shall provide and hereafter maintain ample means of ventilation for the circulation of air through the main entries, cross entries and all other working places, to an extent that will dilute, carry off and render harmless, the noxious or dangerous gases generated in the mine, affording not less than one hundred and fifty cubic feet per minute for each and every person employed therein, and not less than six hundred cubic feet per minute for each and every animal and mobile loading machine while in operation in the mine; but in any mine, or section of a mine, where fire-damp is generated, not less than two hundred cubic feet of air per minute shall be provided for each person, or as much more as may be necessary to keep such section free from fire-damp. The

quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement shall be made by the foreman or his assistants once a week at the inlet and outlet airways, and also at or near the face of each entry, and shall be recorded in the book kept for that purpose at the mine office. The quantity of air as provided for in this act for each person shall be conducted to each working place.

The oxygen content of the air in a coal mine must be maintained at nineteen or more per cent. and the carbon dioxide at less than one per cent. and all poisonous gas must be kept below a harmful percentage as determined by samples of air taken by the state coal mining inspector. All requirements relative to the purity of air in coal mines, not herein provided for, shall conform to the recommendations and requirements of the United States bureau of mines relative to coal mines in the state of Montana.

In rooms generating fire-damp, the volume of air required by this act shall be conducted to the face thereof by the use of brattice-cloth or other suitable means. [As amended Sec. 2, Ch. 146, L. 1937; Amd. Sec. 1, Ch. 145, L. 1939.]

3504. Cross-cuts and brattices for ventilation. Cross-cuts between the entries, except where the same are within the confines of shaft bottom pillars, or are hereafter provided for, shall be made not exceeding sixty (60) feet apart, unless sufficient brattice is used to keep the air current up to the entry face, in which case they shall not exceed one hundred (100) feet apart. Where entries or rooms are being driven by entry driving machines, or any other mechanical loading device, or where local mechanical methods of ventilation are installed to furnish air to the workmen at the face, crosscuts may be driven at not exceeding three hundred (300) feet apart, provided that brattice, tubing or some other device is used sufficient to give at the face twice the amount of air per man and animal provided for in section 3501, and to clear said face of powder smoke before the men are required to return to work therein. In mines or sections of a mine where no local mechanical methods of ventilation are installed, when there is a solid block on one side of a room, cross-cuts shall be made between such room and the adjacent room not to exceed sixty (60) feet apart; where there is a breast or group of rooms, a cross-cut shall be made on one side or the other of each room, except the room adjoining said block, not to exceed fifty (50) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and on the opposite side of the same room a cross-cut shall be made not to exceed ninety (90) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and thereafter cross-cuts shall be made not to exceed eighty (80) feet apart on each side of the room.

Brattices between permanent inlet and outlet airways shall hereafter be constructed in a substantial manner of brick, blocks, masonry, concrete, or non-perishable material. Rooms must not be worked in advance of the ventilating current. [As amended Sec. 3, Ch. 146, L. 1937.]

CHAPTER 305, CONSERVATION OF OIL AND NATURAL GAS—OIL CONSERVATION BOARD

3554.14. Tax levy—collection of tax. There is hereby levied and assessed a privilege and license tax of one-fourth of one cent per barrel on each

and every barrel of crude petroleum produced, saved and marketed or stored within the state of Montana, during the period during which said board is in existence. Producers thereof shall pay such tax on each barrel of crude petroleum produced for themselves as well as for others including royalty holders and shall be reimbursed for such tax paid on crude oil produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum produced for others as provided in section 2091.1 of the Revised Codes of Montana of 1935. [As amended Sec. 1, Ch. 123, L. 1937.]

3554.15. Statement of producer—payment of tax. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of January, April, July, and October, of each and every calendar year, beginning with the month of July of the year one thousand nine hundred and thirty-seven, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the oil conservation board of the state of Montana, duly signed and sworn to, of all crude petroleum produced by him in this state during the next preceding three calendar months, and containing such other information as the oil conservation board may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in section 3554.14 of the Revised Codes of Montana of 1935 in an amount equal to one-fourth of one cent per barrel for each barrel of crude petroleum produced by him within the state of Montana during the period covered by such statement. Any producer carrying on business at more than one place or location in this state may include all such places of business in one statement. [As amended Sec. 2, Ch. 123, L. 1937.]

CHAPTER 306, THE DEPARTMENT OF AGRICULTURE, LABOR AND INDUSTRY—REGULATION OF AGRICULTURE, HORTICULTURE, APICULTURE, POULTRY HUSBANDRY, DAIRY-ING, GRAIN GRADING AND INSPECTION, STATISTICAL DATA AND THE STATE FAIR

3564. Duty of department of agriculture, labor and industry. The department of agriculture, labor and industry, through its authorized agents and representatives, shall enforce all the laws of Montana now existing or hereafter enacted for the protection and regulation of the farming industry in Montana; it shall also make a special study of the conditions of farm life in Montana and the problems of marketing and distribution of farm products, and shall from time to time make recommendations to the governor concerning needed legislation upon such subjects; it shall enforce the provisions of sections 3593 to 3602 of this code, relating to purity of agricultural seeds, and of sections 3603 to 3607 of this code, relating to the eradication of the barberry plant, and of sections 3631 to 3633 of this code, relating to the control of insect pests and plant diseases, and for that purpose shall make proper and necessary rules and regulations. [As amended Sec. 1, Ch. 88, L. 1939.]

3573. The division of grain standards and marketing.

Where a bond for the protection of those storing property in a bean warehouse was not conditioned on the licensing and su-

pervision of the warehouse by the state and the surety company knew there was no state law for the licensing, regulation, or

supervision of bean warehouses, it is not relieved from liability because the warehouse was not licensed nor subject to supervision by the state. *Fidelity & Deposit Co. v. State of Montana*, 92 F. (2d) 693, (see also 16 F. S. 489).

3575.1. State scale expert—appointment—bond—deputy's bond. [Repealed Sec. 31, Ch. 146, L. 1939.]

3575.2. Fees for scale inspection service. There shall be collected by the state sealer of weights and measures or his deputies from each person, firm, co-partnership or corporation the following inspection fees: For each railroad track scale the sum of ten dollars (\$10.00); grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, ten dollars (\$10.00); wagon scale, truck scale, coal scale, dump scale, automatic or hopper shipping scale, beet scale, and stock scale, five dollars (\$5.00); for each dormant platform scale, and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two dollars (\$2.00); each portable scale, meat track scale, hanging scale and commercial person weighing scale, one dollar (\$1.00); grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty cents (50c); all counter scales with a capacity of one (1) to ten (10) pounds, twenty-five cents (25c); all counter scales with a capacity of over ten (10) pounds, seventy-five cents (75c). The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices not covered by the foregoing schedule of fees. [As amended Sec. 2, Ch. 146, L. 1939.]

3575.3. Payment of expenses of state sealer of weights and measures—contingent revolving fund. All bills and accounts incurred by the state sealer of weights and measures and his deputies shall be presented to the board of examiners and allowed by said board in the same manner as provided for other claims contracted for and in behalf of the state of Montana. And to expedite the handling of the work in the field there shall be set aside a contingent revolving fund of two thousand dollars (\$2,000.00) out of which the expenses of the field men shall be paid each week, together with other emergency cash claims. [As amended Sec. 3, Ch. 146, L. 1939.]

3575.4-3575.7. [Repealed Sec. 31, Ch. 146, L. 1939.]

3579. Charges of public warehousemen.

References

Rocky Mountain Elevator Co. v. Bammel et al., 106 M 407, 414, 81 P 2d 673.

3592.1. License for seed warehouses.

Where a bond for the protection of those storing property in a bean warehouse was not conditioned on the licensing and supervision of the warehouse by the state and the surety company knew there was no state law for the licensing, regulation, or

supervision of bean warehouses, it is not relieved from liability because the warehouse was not licensed nor subject to supervision by the state. *Fidelity & Deposit Co. v. State of Montana*, 92 F. (2d) 693, (see also 16 F. S. 489).

3592.69. License and bond of mustard seed purchasers. All persons, firms, co-partnerships, corporations and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, shall, on or before the first day of March of each year, pay to the state treasurer of Montana a license fee in the sum of ten dollars (\$10.00) for the privilege of carrying on such business, and shall on or before said first day of March of each year, give a bond with good and sufficient sureties approved by

the commissioner of agriculture of the state of Montana, in such sum as the commissioner may require but not less than ten thousand dollars (\$10,000.00) conditioned upon the payment for such contracted seed at the price or prices specified in such contract, and upon the payment of such license fee of ten dollars (\$10.00) and upon the approval of such bond by the commissioner of agriculture, said commissioner shall issue to such person or persons, firm, co-partnership, corporation or association a license to engage in such business in the state of Montana for a period of one year.

Any person who shall commence the business aforesaid after the first day of March of any year shall be required to pay said license fee and to furnish such bond before engaging in or carrying on such business. [En. Sec. 1, Ch. 64, L. 1939.]

3592.70. Duty of commissioner of agriculture. It is hereby made the duty of the commissioner of agriculture to administer and enforce this act, and for that purpose he shall make all necessary and proper rules and regulations. [En. Sec. 2, Ch. 64, L. 1939.]

3592.71. Disposal of fees. All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the revolving fund of the grain division of the department of agriculture, labor and industry. [En. Sec. 3, Ch. 64, L. 1939.]

3592.72. Revocation of license—reports by licensee. The commissioner of agriculture may revoke for cause any license issued hereunder, and any person, firm, co-partnership, corporation or association licensed under the provisions of this act shall make a report to the commissioner of agriculture whenever he may require the same showing the amount of seed contracted. [En. Sec. 4, Ch. 64, L. 1939.]

3592.73. Penalties for violations. Any person, firm, co-partnership, corporation, or association who shall engage in or carry on the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, without having license therefor shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each and every day that such business is so carried on or engaged in shall constitute a separate offense. [En. Sec. 5, Ch. 64, L. 1939.]

3593. Definitions. Terms as used in this act and not otherwise identified, are hereby defined:

1. The term "agricultural seeds" or "agricultural seed" shall include the seeds of the legumes, such as alfalfa, clovers, sweet clover, field and canning peas, field beans, vetches, and soy beans; the grasses, such as the blue grasses, timothy, redtop, brome grasses, canary grass, fescues, oat grass, orchard grass, rye grasses, and wheat grasses; the cereals, such as wheat, oats, barley, rye, corn, and hybrid corn; and miscellaneous crops such as rape, buckwheat, millet, sorghums, mustard, flax; together with seeds of any other crops that may be raised as field crops in Montana, when such are sold, offered, or exposed for sale within this state, country or territory, for seeding purposes within this state.

2. The term "noxious weeds" shall mean those plants which are a menace to Montana agriculture and which are especially difficult to control, and shall include: Quack grass, fanweed, wild oats, dodder, Canada thistle, wild mustard, wild morning glory, white top, leafy spurge, perennial sow thistle, Russian knapweed, and blue lettuce.

3. The term "weed seed" shall mean the term noxious weeds, above listed, and all seeds not listed as agricultural seeds.

4. The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the association of official seed analysts of North America.

5. The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when such seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of such seed, as specified in the "rules for seed testing" adopted by the association of official seed analysts of North America.

6. The term "name of state in which such seed was grown" shall mean any of the several states of the United States or the foreign country.

7. The term "other crop seeds" shall mean any agricultural seeds other than the seed or the mixture of agricultural seeds under consideration.

8. The term "sell" shall include "offer for sale", "expose for sale", "have in possession for sale", "exchange", "barter", or "trade". It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract. [As amended Sec. 2, Ch. 88, L. 1939.]

3594. Labeling of agricultural seed. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1. A lot number or other distinguishing mark; the commonly accepted name of the kind or kinds of such agricultural seed, together with the variety name, and if such is not known, the fact must be so stated by using the word "unknown".

1a. Name of state, country or territory, in which such agricultural seed was grown.

2. The approximate percentage of germination of such agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of such hard seeds may be added to the percentage of germination, and stated as "total live seed".

3. The approximate percentage by weight of purity; meaning the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.

4. The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in such agricultural seeds.

5. The approximate total percentage by weight of weed seeds.

5a. The approximate percentage by weight of other crop seeds in such agricultural seeds.

6. The name and approximate number per pound of each kind of the seeds of the noxious weeds, if any such are found in such agricultural seeds in quantities in excess of one in portions of the seed equal to the following: (a) Five (5) grams of small seeds defined as alfalfa, clovers, sweet clover, timothy, redtop, blue grass, oats grass, orchard grass, fescues, brome grass, rye grasses, wheat grasses, and all other grasses and clovers not otherwise classified. (b) Twenty-five (25) grams of medium sized seeds defined as millets, rape, flax, and other seeds not specified in (a) or (c) of this subsection. (c) One hundred (100) grams of wheat, oats, rye, barley, buckwheat, vetches, and other seeds as large or larger than wheat.

7. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said agricultural seed for sale.

8. Mixtures of agricultural seeds which contain two (2) or more kinds of such seeds in excess of five per cent (5%) by weight of each, when sold, offered, or exposed for sale as mixtures, shall have affixed thereto, in a conspicuous place on the exterior of the container of such mixture of seeds, a plainly written or printed tag or label in the English language, stating:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five (5%) per cent by weight of the total mixture.

(bb) Approximate percentage by weight of broken seeds and other inert matter in such mixture of **agricultural seeds**.

(c) Approximate percentage by weight of weed seeds as defined in subdivision 3 of section 3593.

(cc) Approximate percentage by weight of other crop seed in such mixture of agricultural seeds.

(d) The name and approximate number per pound of each kind of the seeds or bulblets of the noxious weeds listed in subdivision 2, of section 3593, which are present singly or collectively in excess of one seed or bulblet in each fifteen (15) grams of such mixture.

(e) Approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five per cent (5%) by weight, together with the month and year said seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of such hard seed may be added to the percentage of germination and stated as "total live seed".

(f) Full name and address of the vendor of such **mixture**.

(g) When space is provided on labels appearing on seed, providing for the insertion of specific items relative thereto and such spaces are left open, the blank space or spaces shall be deemed to imply that the word "none" was intended, when such interpretation is reasonable.

(9) The Montana commissioner of agriculture, labor and industry shall prescribe the form of labels to be used as provided for in section 3594. [As amended Sec. 1, Ch. 192, L. 1937; Amd. Sec. 3, Ch. 88, L. 1939.]

3595. Law not applicable to what seed. Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

(4) When sold by a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor. [As amended Sec. 4, Ch. 88, L. 1939.]

3593. Violation of law a misdemeanor—penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) and costs of such prosecution. [As amended Sec. 5, Ch. 88, L. 1939.]

3597. Inspection by director of grain inspection laboratory—duties of commissioner and director. The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of and test seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. When said Montana grain inspection laboratory shall find by its examinations, analyses, or test that any person, firm or corporation has violated any of the provisions of this act, it shall give notice of such violations to the vendor or consignee of said lot of seed and at the same time mail a copy of such notice to the person, firm or corporation whose tag or label was found affixed thereto. The commissioner of agriculture of the state of Montana shall also be notified of such violation. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture, labor and industry to administer and enforce this act. For that purpose, he is hereby empowered to make all proper

rules and regulations not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein. [As amended Sec. 6, Ch. 88, L. 1939.]

3598. Employment of agents—salaries and expenses. The director of the Montana grain inspection laboratory, under the direction of the director of the Montana agricultural experiment station, may employ such agents as are deemed necessary to each year inspect, sample and make analysis of any agricultural seed on sale in the state for seeding purposes within the state, and the salaries and necessary expenses of such agents, together with the cost of publishing the findings of such inspections and analyses, shall be paid out of moneys appropriated for the Montana grain inspection laboratory, of the Montana agricultural experiment station. [As amended Sec. 7, Ch. 88, L. 1939.]

3599. Samples may be sent to laboratory for tests. Any citizen of the state of Montana, in accordance with the regulations prescribed by the commissioner of agriculture, by prepaying the transportation charges may send, in one year, five (5) samples of seed to the Montana grain inspection laboratory of the Montana agricultural experiment station for examination, analyses, or test, free of charge. Other samples of seed analyzed and tested for purity and germination, or either, shall be charged for at the rate of fifty cents (50c) each, for unmixed seeds. Samples of mixed seeds analyzed and tested shall be charged for at the rate of seventy-five cents (75c) per hour for the actual time required for making analyses and tests, and all such fees are hereby appropriated for the use and purpose of the Montana grain inspection laboratory of the Montana agricultural experiment station to defray the expenses incurred by said laboratory, under the provisions of this act. [As amended Sec. 2, Ch. 192, L. 1937; Amd. Sec. 8, Ch. 88, L. 1939.]

3600. Certificate of test presumptive evidence. The certificate of the Montana grain inspection laboratory of the Montana agricultural experiment station, giving results of any examinations, analyses or tests of any seed samples made under the authority of the commissioner of agriculture of the department of agriculture, labor and industry shall be presumptive evidence of the correctness of the facts therein stated. [As amended Sec. 9, Ch. 88, L. 1939.]

3601-3602. [Repealed Sec. 10, Ch. 88, L. 1939.]

3608.1. Commissioner of agriculture to enforce hay grading law. [Repealed Sec. 8, Ch. 204, L. 1937.]

3614. Sale of nursery stock—inspection—fee. It shall be the duty of every person or persons, corporation or corporations, who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions, grafts, fruits or vegetables not previously inspected under the provisions of this act, to notify the commissioner of agriculture, or the nearest horticultural inspector of such sale or delivery. It shall be the duty of the inspector receiving such notice to inspect the said trees, plants, grafts, scions, vines, fruits or vegetables, as soon thereafter as practicable, and

if the same be found free from any and all diseases and pests, he shall so certify and attach a certificate of inspection to each lot or bill of trees, plants, scions, grafts, vines, fruits or vegetables, so inspected. But if any of the trees, grafts, scions, vines, plants, fruits or vegetables so inspected shall be found to be diseased or infested with any of the pests mentioned in section 3626, Revised Codes of Montana, 1935, then the inspector shall order the disinfection or destruction of any of said trees, grafts, scions, vines, plants, fruits or vegetables, so diseased or infested, together with all boxes, wrapping or packing pertaining thereto; provided, that when any fruit or nursery stock, or vegetables is condemned by any inspector, said inspector shall notify the owner thereof, who may appeal to the commissioner of agriculture, whose decision shall be final; and charge and collect the sum of ten (\$10.00) dollars for the inspection of each carload of said nursery stock and a proportionate sum for less than carload lots, as fixed by the commissioner; provided, that the commissioner of agriculture shall have power to designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected. The charge for disinfecting or fumigating of nursery stock, fruits and vegetables shall be fixed by the commissioner of agriculture.

For the inspection of vegetables a fee of two cents (2c) per box or package with a maximum fee of four (\$4.00) dollars for each separate lot or car shall be charged or collected.

For the inspection of fruit a fee of two (2c) cents per box or package, with a maximum fee of five (\$5.00) dollars for each separate lot or car, shall be charged and collected.

The inspector shall collect all such fees and shall not give certificate of inspection until the fees are paid. [As amended Sec. 1, Ch. 112, L. 1939.]

3617. Removal of infected trees, plants or vines—assessment of costs. If any person, firm or corporation, or the legal representative of any person, firm or corporation, owning any orchard, tree, shrub, plant or vines which is known to be infected or infested with any injurious insect pest or disease and which thereby becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants or vines of this state, or any city or county thereof, shall fail, refuse or neglect to comply with the instructions of the department of agriculture, labor and industry, or its authorized representative, for the eradication or control of such injurious insect pest or disease, or the destruction of said infested or infected orchard, tree, shrub, plant or vines within the time specified by the said department or its authorized representatives, if in the judgment of said department or its authorized representatives such treatment or destruction shall be deemed necessary, said department or its authorized representative is empowered to condemn, remove or destroy any such orchard, tree, shrub, plant or vines or treat such orchard, tree, shrub, plant or vine, with a proper remedy, and if such owner, or his legal representative shall fail, neglect or refuse to pay the cost of such removal, treatment, or destruction of such orchard, tree, shrub, plant, or vines within thirty days after due notice has been given by mailing to the owner, or his legal representative, at his last known post-office address, then said cost and expense shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon

said property and collected as other taxes. [As amended Sec. 1, Ch. 86, L. 1939.]

3626. Importation and sale of infected fruit. It shall be unlawful for any person, firm or corporation to import into this state, sell, barter or otherwise dispose of, or offer for sale, or have in his possession for the purpose of sale or barter, any fruit or vegetable which is or has been infested with San Jose scale, or the larvae of the codling moth, or other insect pest or disease dangerous to agriculture; and the fact that any fruit or vegetable bears the mark of any such insect, or is worm eaten by the larvae of the codling moth, or shows the effect of disease, shall be deemed conclusive evidence that the fruit or vegetable is infected within the meaning of this section, and may be condemned and confiscated by any legal horticultural inspector; provided that nothing in this section shall be construed to prevent the growers of such infected fruit or vegetable from manufacturing the same into a by-product, or selling and shipping the same to a by-product factory, after first having obtained a written permit so to do from a horticultural inspector. [As amended Sec. 1, Ch. 90, L. 1939.]

3633.4. Sale of products without grading and branding unlawful—sale of cull and unclassified products—seed purposes—potatoes. (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or consignment in interstate or intrastate commerce, farm products prepared for market which are not graded and branded to meet the requirements of the grade declared. The grade declared shall conform to the provisions of this act.

(b) Provided that farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded "For Seed Purposes."

(e) Provided further that U. S. commercial grade shall not be a standard grade in the state of Montana.

(f) That potatoes graded to contain one-half (50 per cent) that shall meet all the requirements of U. S. No. 1, and the remaining one-half that shall meet the size requirements of U. S. No. 1 and the quality requirements of U. S. No. 2 grade, may be classified and sold as Montana combination grade. This grade may not contain more than five per cent by weight, that are below the prescribed size, nor more than six per cent that are below the quality requirements of the U. S. No. 2 grade, nor more than one per cent affected by soft rot. Provided further, that none of the above named tolerances shall apply to the one-half that meet all the requirements of U. S. grade No. 1, but shall apply only to the remaining half. [As amended Sec. 1, Ch. 71, L. 1937.]

CHAPTER 306-A, MONTANA AGRICULTURAL CONSERVATION ACT

3649.4. Title of act. This act may be known and cited as the Montana agricultural conservation act. [En. Sec. 1, Ch. 134, L. 1937.]

NOTE.—By Section 3649.17 this act is to become effective upon proclamation by the governor after approval of the act by the federal government.

3649.5. Declaration of policy. It is hereby recognized and declared: That the soil resources and fertility of the land of this state and the economic use thereof; the prosperity of the farming industry are matters of public interest; that the public welfare has been impaired by destruction of its soil fertility by reason of wasteful exploitation and unscientific use of soil resources and by wasteful use of the waters and water courses of the state, thus decreasing the purchasing power and the net income of the agricultural industry; that the said evils are interrelated with similar conditions existent in other states, all of which conditions require action by this state in cooperation with governmental agencies of the United States and of other states in order to secure the aid and assistance of such governmental agencies in pursuance of the soil conservation and domestic allotment act or acts amendatory thereto, calculated to remedy existing conditions and to advance the public welfare of this state. [En. Sec. 2, Ch. 134, L. 1937.]

3649.6. Acceptance of federal acts—limitations. In order to effectuate and carry out the declared policy of this act and to enable this state to avail itself of the provisions of the acts of congress, to cooperate with the president of the United States, any department, board or agency thereof; by aiding in the preservation and improvement of soil fertility, the economic use of conservation of land by eliminating the wasteful and unscientific use of the soil resources, against the results of soil erosion; in the re-establishment and maintenance of the purchasing power of persons engaged in pursuit of the agricultural industry, the state of Montana hereby assents to and accepts the provisions of the acts of congress and grants for such objects and adopts the policy and purpose of cooperating with the federal government and agencies of other states in the accomplishment of the purposes specified in any act of congress subject however to the following limitations:

(1) The powers conferred in this act shall be used to assist voluntary action calculated to effectuate such purposes.

(2) Such powers shall not be used to discourage the production of supplies of foods and fibers in this state sufficient when taken together with the production thereof in all other states of the United States to maintain normal domestic human consumption as determined by the secretary of agriculture of the United States from the records of consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodities that were forced into domestic consumption by a declining in exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities.

(3) In carrying out the purposes specified in this section due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers. [En. Sec. 3, Ch. 134, L. 1937.]

3649.7. Definitions. (a) The term "person" as used in this act, unless the context otherwise requires, includes an individual, corporation, partnership, firm, business trust, joint stock company, association, syndicate, group, pool, joint venture, and any other unincorporated association or group.

(b) The expression "other states of the United States" as used in this act shall include Alaska, Hawaii, and Puerto Rico.

(c) The term "state agricultural districts" shall mean such districts as herein designated including the various counties of the state.

(d) The term "county associations" shall mean the representative association of the several community groups of the several community districts of such county. [En. Sec. 4, Ch. 134, L. 1937.]

3649.8. Establishment of Montana agricultural conservation board. (a) There is hereby established a board of seven members which shall be known as the Montana agricultural conservation board and which shall be referred to hereinafter as the "state board".

(b) Six members of the state board shall be persons experienced and actually engaged in the production of agricultural commodities, selected as provided in section 3649.12, and shall be referred to hereinafter as "producer member".

No person shall be eligible for appointment as a producer member of the state board unless he is of legal age, a citizen of the state, a resident of the district which he represents and a producer of the commodity for which his district is hereinafter designated and who shall have been duly recommended to the governor for such membership by the chairman of county committees of the several counties which comprise his district as provided in section 3649.12; nor shall any person be appointed as a producer member if he is a resident in the same state agricultural district established pursuant to section 3649.10, as any producer member whose term includes any part of the term of such person.

(c) One member of the state board shall be appointed by the governor from two nominees of the state agricultural college recommended to him by the president of the state agricultural college. [En. Sec. 5, Ch. 134, L. 1937.]

3649.9. Designation of state board as state agency. The state board is hereby designated and authorized as the state agency of this state to carry out the policy and purposes of this act and to formulate and administer state plans pursuant to the terms of this act. [En. Sec. 6, Ch. 134, L. 1934.]

3649.10. Agricultural districts. The agricultural districts of the state shall be constituted as follows:

District No. 1 shall comprise the counties of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Deer Lodge, Granite and Ravalli, with the meeting center thereof at the city of Missoula. The board member therefrom shall be designated as the diversified farming representative.

District No. 2 shall comprise the counties of Glacier, Pondera, Teton, Cascade, Toole, Liberty, Hill, Chouteau, Blaine and Phillips, with the meeting center thereof at the city of Havre. The board member therefrom shall be designated as a grain producing representative.

District No. 3 shall comprise the counties of Valley, Daniels, Sheridan, Roosevelt, McCone, Richland, Dawson, Prairie, Wibaux and Fallon, with

the meeting center thereof at the city of Culbertson. The board member therefrom shall be designated as the grain producing representative.

District No. 4 shall comprise the counties of Lewis and Clark, Jefferson, Silver Bow, Beaverhead, Madison, Gallatin, Broadwater and Meagher, with the meeting center thereof at the city of Bozeman. The board member therefrom shall be designated as the sheep producing representative.

District No. 5 shall comprise the counties of Judith Basin, Fergus, Wheatland, Golden Valley, Musselshell, Yellowstone, Stillwater, Sweet Grass, Park and Carbon with the meeting center thereof at the city of Billings. The board member therefrom shall be designated as a grain producing representative.

District No. 6 shall comprise the counties of Petroleum, Garfield, Rosebud, Custer, Treasurer, Big Horn, Powder River and Carter with the meeting center thereof at the city of Miles City. The board member therefrom shall be designated as the cattle producing representative.

The state board may modify, revise or change the boundaries and center meeting place of such state agricultural districts whenever it deems such revision, modification or change is necessary either to cause such districts to conform to said standards or to provide for the more substantial or more efficient accomplishment of the purposes of this act, provided that such modification, change, or revision be first approved by the particular district or districts affected thereby. [En. Sec. 7, Ch. 134, L. 1937.]

3649.11. Community and county committees. As soon as practicable after its organization, the state board shall by rules and regulations provide:

(1) For the organization within each community of a voluntary association in which all agricultural producers who are citizens of this state and residents in such community shall be entitled to participation; for the selection by each such association of a community committee composed of three members of such association; and for the selection of a chairman of each such community committee.

(2) The chairmen of the several community districts shall constitute the executive board of the county association and shall select from their own members a president, vice-president and a third member who shall constitute the county committee. [En. Sec. 8, Ch. 134, L. 1937.]

3649.12. Appointment of members of the state board. (a) Within thirty (30) days after the effective date of this act, the governor shall advise the several county chairmen of the state, to convene in their respective district meeting centers, for the purpose of submitting in writing the names of two qualified representative persons as herein provided from whom the governor shall, at as early date as consistent, select one member to represent each of the state districts as herein provided. The term of such district representative member shall be as follows: Members of odd numbered districts for a term ending on the 31st of December of the year succeeding the date of their appointment; members of the even numbered districts for a term ending on the 31st of December of the current year of the date of their appointment.

(b) On the second Monday of October of each succeeding calendar year the chairmen of the county committees of the various state agricultural districts shall convene at their respective state district meeting center for

the purpose of recommending to the governor in writing two persons, eligible for appointment under the provisions of this act as a producer member of the state committee to succeed the member whose term expires at the end of the year then current. Prior to December 31st of each such year the governor shall appoint from among the persons so recommended one producer member of the state board for a term of two years commencing January 1st of the next succeeding year and until his successor is appointed and qualified.

(c) If a vacancy occurs in the office of any producer member of the state board, the chairmen of the county committees of the state agricultural district so affected shall, within thirty (30) days after the occurrence of such vacancy, recommend to the governor in writing two persons eligible under the provisions of this act for appointment to fill such vacancy for the remainder of the unexpired term. Within thirty (30) days after the receipt of such recommendation, the governor shall appoint one of the persons so recommended as a member of the state committee for the unexpired term.

(d) The provisions of this section, with respect to the time within which recommendations or appointments are to be made, shall be construed as directory and not mandatory, and no appointment made hereunder shall be held invalid by reason of being made after the time prescribed herein or because any recommendation was made in connection therewith after the time provided herein. [En. Sec. 9, Ch. 134, L. 1937.]

3649.13. Formulation and administration of state agricultural plans.

(a) The state board is authorized and directed to formulate for each calendar year, and to submit to the secretary of agriculture of the United States for and in the name of this state, a state plan for carrying out the purpose of this act during such calendar year. In formulating the provisions of such state agricultural plans of the state committee shall consult with the several county agricultural conservation associations and such other agencies of this state as may be proper and qualified to assist therein.

(b) The state board is authorized to modify or revise any such agricultural plan in whatever manner, consistent with the terms of this act, it finds necessary in order to provide for more substantial furtherance of the accomplishment of the purposes of this act.

(c) Each such agricultural plan shall provide for such participation in its administration by such voluntary county and community committees, or associations of agricultural producers, organized for such purposes, as the state board determines to be necessary or proper for the effective administration of the agricultural plan.

(d) Each such agricultural plan shall provide, through agreements, with agricultural producers or through other voluntary methods, for such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities, as the state committee determines to be calculated to effectuate as substantial accomplishment of the purposes of this act, as may reasonably be achieved through action of this state, and for payments to agricultural producers in connection with such agreements or methods, in such amounts as the state committee determines to be fair and reasonable and calculated to promote

such accomplishment of the purposes of this act without depriving such producers of a voluntary and uncoerced choice of action.

(e) Any such agricultural plan shall provide for such educational programs, with the assistance of the state agricultural college and others, as the state board determines to be necessary or proper to promote the more substantial accomplishment of the purposes of this act.

(f) Each such agricultural plan shall contain an estimate of expenditures necessary to carry out such agricultural plan together with a statement of such amount as the state board determines to be necessary to be paid by the secretary of agriculture of the United States as a grant in aid of such agricultural plan under section 7 of the soil conservation and domestic allotment act, in order to provide for the effective carrying out of such agricultural plan, and shall designate the amount and due date of each installment of such grant, the period to which each such installment relates, and the amount determined by the state committee to be necessary for carrying out such agricultural plan during such period.

(g) The state board shall provide for such investigations as it finds to be necessary for the formulation and administration of such agricultural plans. [En. Sec. 10, Ch. 134, L. 1937.]

3649.14. Receipt and disbursement of funds. (a) The state treasurer is hereby authorized and empowered to receive on behalf of this state all grants of money or other aid made available from any source to assist the state in carrying out the policy and purposes of this act. All such money or other aid, together with any moneys appropriated or other provision made by this state for such purpose, shall be forthwith available to the state board as the agency of the state subject, in the case of any funds or other aid received upon conditions, to the conditions upon which such funds or other aid shall have been received, for the purpose of administering this act and may be expended by the state board in carrying out the provisions of this act. Such fund so received by the state treasurer shall be deposited in a fund designated the "state agricultural conservation fund" and shall be subject to withdrawal for the purpose of carrying out the provisions of this act, by the state agricultural conservation board in the manner and form as provided by the agricultural department of the United States or its duly authorized agency.

(b) Subject to any conditions upon which any such money or other aid is made available to the state and to the terms of any applicable agricultural plan made effective pursuant to this act, such expenditures may include, but need not be limited to, expenditures for administrative expenses, equipment, cost of research and investigation, cost of educational activities, reimbursement to other state agencies or to voluntary community committees or county associations of agricultural producers for costs to such agencies, committees, or associations of assistance in the administration of this act, requested in writing by the state board and rendered to the state board, payments to agricultural producers provided for in any agricultural plan made effective pursuant to this act, salaries of employees, and all other expenditures requisite to carrying out the policy and purposes of this act, including compensation of ten (\$10.00) dollars per diem for the members of said state board when engaged upon their official business in performance of their duties under this act and including traveling expenses

of five (5c) cents per mile of the members of said state board and the employees of said state board in connection with their said duties; provided, that no member of the state board shall be entitled to receive compensation for more than ninety (90) days' service in any one calendar year.

(c) The state board shall provide for the keeping of full and accurate accounts, showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under the provisions of this act and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under the provisions of this act. [En. Sec. 11, Ch. 134, L. 1937.]

3649.15. Additional powers and duties of the state committee. (a) The state board shall employ an executive secretary who shall be in charge of the office of the state board and shall perform dual duties as are directed by the board. Such employment of the executive secretary shall be at the pleasure of the board, and shall be a person other than a member of said board. The executive secretary and other necessary employees shall receive such compensation as may be fixed by the board. The state board shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist substantially in the effective administration of this act.

(b) The state board shall have authority to make such rules and regulations, consistent with the provisions of this act, and to do any and all other acts consistent with the provisions of this act which it finds to be necessary or proper for the effective administration of this act.

(c) The state board shall have power and authority to obtain, by lease or purchase, such equipment, office accommodations, facilities, services, and supplies, and to employ such technical or legal experts or assistants and such other employees, including clerical and stenographic help as it determines to be necessary or proper to carry out the provisions of this act, and to determine the qualifications, duties, and compensation of such experts, assistants and other employees.

(d) All other agencies of this state are hereby authorized to assist the state board in carrying out the provisions of this act upon written request and in any manner determined by the state board to be necessary or appropriate for the effective administration of this act. [En. Sec. 12, Ch. 134, L. 1937.]

3649.16. Reports. The state board shall compile or require to be made such reports as it determines to be necessary or proper in order to ascertain whether any plans provided for in this act are being carried out according to their terms. The state board shall provide for compliance on the part of all persons and agencies participating in the administration of any such plan with such requirements and may make, or cause to be made, such investigations as it determines to be necessary or proper to assure the correctness of and to make possible the verification of such reports. [En. Sec. 13, Ch. 134, L. 1937.]

3649.17. Effective date of act. This act shall take effect upon its passage and approval by the governor and after the receipt of notification by the governor from the federal administration of the agricultural con-

servation and domestic allotment act that the administration of the provisions of the act within the state of Montana has by and with the approval of such federal agency been released to the Montana agricultural conservation board for the administration of the provisions of such act in cooperation with such federal agency. Upon receipt of such notification the governor of Montana shall by proclamation declare this act to be in full force and effect. [En. Sec. 16, Ch. 134, L. 1937.]

NOTE.—No proclamation by the governor making this act effective had been made when this supplement was printed.

CHAPTER 306-B, THE STATE SOIL CONSERVATION DISTRICTS LAW

3649.18. Short title. This act may be known and cited as “the state soil conservation districts law.” [En. Sec. 1, Ch. 72, L. 1939.]

3649.19. Legislative determinations, and declaration of policy. It is hereby declared, as a matter of legislative determination:

A. The condition. That the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest-cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The consequences. That the consequences of such soil erosion in the form of soil-blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to

roads, highways, railways, farm buildings and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming and grazing.

C. The appropriate corrective methods. That to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. [En. Sec. 2, Ch. 72, L. 1939.]

3649.20. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act;

(3) "Committee" or "state soil conservation committee" means the agency created in section 3649.21;

(4) "Petition" means a petition filed under the provisions of subsection A of section 3649.21 for the creation of a district;

(5) "Nominating petition" means a petition filed under the provisions of section 3649.22 to nominate candidates for the office of supervisor of a soil conservation district;

(6) "State" means the state of Montana;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any sub-division, agency, or instrumentality, corporate or otherwise of either of them;

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. [En. Sec. 3, Ch. 72, L. 1939.]

3649.21. State soil conservation committee. A. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this act, the state soil conservation committee. The state soil conservation committee shall consist of seven (7) members. The following shall serve as members of the committee: The director of the state agricultural experiment station at Bozeman, Montana; the director of the state extension service at Bozeman, Montana; one member of the state grazing commission designated by that commission; one member of the water conservation board designated by that board and the commissioner of the state department of agriculture. Two (2) additional farmer members shall be chosen by the governor, one from each of a group of five (5) to be submitted by each of the two (2) leading farm organizations. The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the above-mentioned members as a non-voting member of the committee. The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The committee may call upon the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment. Upon request of the committee for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail

to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. The committee shall annually elect a chairman from its own membership. State committeemen shall continue as members of the state committee so long as they shall retain the offices by virtue of which they shall be serving on the committee. The appointed farmer members shall hold office for four (4) years and their term of office shall be concurrent with the governor. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Ex-officio members of the committee shall receive no compensation for their services on the committee. Other members of the committee shall receive five dollars (\$5.00) per day while on duty. All members of the state committee shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the account of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experiences of all other districts organized hereunder, and to facilitate an interchange of advice and experiences between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable. [En. Sec. 4, Ch. 72, L. 1939.]

3649.22. Creation of soil conservation districts. A. Any ten (10) occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;

(4) A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any of such petitions.

B. Within thirty (30) days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section 3649.18. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hear-

ing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of _____, _____, and _____" and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of _____ and _____" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of lands lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it

shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 3649.18; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty-five (65) per cent of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of

such district, and that the result of such referendum showed sixty-five (65) per cent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this act.

G. After six (6) months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this act.

H. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the occupiers of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certifi-

cate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. [En. Sec. 5, Ch. 72, L. 1939.]

3649.23. Election of supervisors for each district. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such districts. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by ten (10) or more occupiers of lands lying within the boundaries of such district. Land occupiers may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All occupiers of lands lying within the district shall be eligible to vote in such election. Only such land occupiers shall be eligible to vote. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of votes therein, and shall publish the results thereof. [En. Sec. 6, Ch. 72, L. 1939.]

3649.24. Number, term, business and powers of supervisors. The governing body of the district shall consist of five (5) supervisors elected as provided hereinabove.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Vacancies shall be filled for the unexpired term. The selection of successor to fill an unexpired term, or for a full term shall be by election. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors,

or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [En. Sec. 7, Ch. 72, L. 1939.]

3649.25. Powers of districts and supervisors. A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the districts on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 3649.18, on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(7) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless

terminated as hereafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. [En. Sec. 8, Ch. 72, L. 1939.]

3649.26. Adoption of land use regulations. The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No....., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No....., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least sixty-five (65) percent of the votes cast in such ref-

erendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by sixty-five (65) percent of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed, except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

2. Provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation and reforestation;

3. Specifications of cropping and range programs and tillage and grazing practices to be observed;

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in section 3649.18.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping programs, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. [En. Sec. 9, Ch. 72, L. 1939.]

3649.27. Performance of work under the regulations by the supervisors. The supervisors shall have authority to go upon any lands within the dis-

trict after a complaint shall have been filed with the supervisors charging a violation of the regulations, to determine whether land-use regulations adopted under the provisions of section 3649.25 are being observed. Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 3649.25 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five (5) per centum per annum, from the occupier of such lands. In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five (5) per centum per annum until paid, together with

the costs of suit, including a reasonable attorney's fee to be fixed by the court. [En. Sec. 10, Ch. 72, L. 1939.]

3649.28: Board of adjustment—organization—powers—duties—court review of findings.

A. Where the supervisors of any district organized under the provisions of this act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of section 3649.25 they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such board of adjustment shall be appointed by the state soil conservation committee, with the advice and approval of the supervisors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the state soil conservation committee and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the state soil conservation committee and the supervisors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4.00) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

B. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this act and with provisions of any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

C. Any land occupier may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands

are located and upon the chairman of the state soil conservation committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the state soil conservation committee shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

D. Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district or any intervening party, may obtain a review of such order in any district court of the county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall

file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court. [En. Sec. 11, Ch. 72, L. 1939.]

3649.29. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act. [En. Sec. 12, Ch. 72, L. 1939.]

3649.30. State agencies to cooperate. Agencies of this state which shall have jurisdiction over, or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to section 3649.25 shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands. [En. Sec. 13, Ch. 72, L. 1939.]

3649.31. Discontinuance of districts. At any time after five (5) years after the organization of a district under the provisions of this act, any ten (10) occupiers of land lying within the boundaries of such district may file a petition with the state soil conservation committee, praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the..... (name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relative thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of

the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 3649.18; provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee, setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any

judgment entered under the provisions of section 3649.26, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all rights and obligations of the district or supervisors as to such liens and actions. [En. Sec. 14, Ch. 72, L. 1939.]

3649.32. Disposition of funds.

A. Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of soil conservation districts organized under the provisions of this act shall be allocated by the state soil conservation committee among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection B of this section. All moneys allocated to any district by the said committee shall be available to the supervisors of such district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by said district.

B. Seventy-five (75) per centum of all moneys which may be appropriated to pay the administrative and other expenses of soil conservation districts shall be allocated by the state soil conservation committee among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five (25) per centum of said moneys shall be allocated by the state committee among the districts on such basis of allocation as shall be fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of such moneys, the committee shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

C. The state soil conservation committee shall submit to the state board of examiners, on or before the first day of November of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the committee and to the districts; and the estimates of the committee as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period. [En. Sec. 15, Ch. 72, L. 1939.]

3649.33. Inconsistency with other acts. Insofar as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. [En. Sec. 16, Ch. 72, L. 1939.]

CHAPTER 307, FISH AND GAME LAWS—COMMISSION AND WARDEN

3653. Powers and duties of commission.

Held, on application for writ of supervisory control to annul a temporary order restraining the State Fish and Game Commission from putting into effect its order lengthening the hunting season on elk in a certain locality in the state as fixed by section 3696, Revised Codes, that under section 3653 (as amended by the Laws of 1935) declaring that the statutes governing "such subjects" should continue to be in force and effect, except as altered or modified by the rules and regulations

of the commission, thus in effect empowering it to modify the existing statutes by its rules and regulations, and evidencing the legislative intention to place the entire matter of open and closed seasons on game in the hands of the commission, the commission had the power to lengthen the season and that, therefore, the restraining order was improperly issued. State ex rel. Fish and Game Com. of Mont. v. District Court, 107 M 289, 290 et seq., 84 P 2d 798.

3676. Creating fish and game preserves, refuges, sanctuaries, rest grounds, closed districts and closed seasons. Preserves, refuges, sanctuaries, rest grounds, or closed districts made or created by said commission, and any land or water areas or portions thereof, closed by said commission, shall be conspicuously posted for a period of twenty (20) days, with posters setting forth their purposes and the penalties for violating the orders, rules and regulations of the state fish and game commission applicable to them. Not less than twenty (20) days before any fish and game district, closed district, preserve, refuge, sanctuary, rest ground, so created by said commission, or closure of land or water areas becomes effective, publication shall be made as provided in section 3677 hereof of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary or rest ground, so created by said commission, such boundaries to be accurately designated by definite topographic monuments or public land survey. The hunting, pursuing, capturing, killing or taking of any fish or game animals or game birds or fur-bearing animals in violation of the rules, regulations or orders of the state fish and game commission governing any closed season, fish and game district, refuge, sanctuary, preserve, rest ground or closed land or water area, promulgated by said commission shall be punishable with the same penalties as provided for the violation of the state fish and game laws of this state, regarding closed seasons. All game preserves or refuges heretofore created are continued in full force and effect until such time as the same are changed by the commission in the manner herein designated; provided, that said commission shall have the right, power and authority when properly petitioned to alter, and change the boundaries of, or entirely do away with and abandon any preserve or refuge, excepting the Sun River game preserve, when in the opinion of said commission, it is to the best interest so to do. [As amended Sec. 1, Ch. 145, L. 1937.]

CHAPTER 308, FISH AND GAME LAWS—LICENSES—PROTECTION AND PROPAGATION OF FISH AND GAME

3681. Definitions.

References

State ex rel. Fish and Game Com. of Mont. v. District Court, 107 M 289, 290, 84 P 2d 798.

3685. Fees and powers under licenses—tagging of carcasses and reports of killing of elk or deer—transfer of money from fish and game fund to bounty fund. Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of two dollars (\$2.00) as a license fee, and shall obtain a license of class A, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess game birds and to fish with hook and line or rod in hand as authorized by this act.

Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of one dollar (\$1.00), and shall obtain a license of class AA, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess any of the game animals of this state as authorized by this act; provided, however, that said applicant, in order to obtain said class AA license, must be the owner and possessor of a class A license, as hereinabove defined.

Said applicant, if a resident 'sportsman' of the state of Montana and a citizen of the United States, may pay to the officer or person countersigning and issuing the license the sum of five dollars (\$5.00) as a license fee, and shall obtain a license of class AAA, herein designated as a resident 'sportsmen's' license, which shall entitle the holder to pursue, hunt, kill, capture, take and possess game, game birds and game animals, and to fish with hook and line or rod in hand as authorized by this act.

All citizens of the United States who have lived in this state at least six months immediately preceding their application for a license, or officers, soldiers, sailors and marines of the United States army, navy, or marine corps, shall be deemed resident citizens for the purpose of this section, as well as officers of the forest service and of the biological survey of the United States department of agriculture.

Said applicant, if a non-resident of the state or a resident for less than six months immediately preceding his application for a license and a citizen of the United States, shall pay to the officer countersigning and issuing the license the sum of five dollars (\$5.00) as a license fee, and shall obtain a class B license, which shall entitle the holder to fish with hook and line, or rod in hand, as authorized by this act; and such non-resident, on like application and on the payment of the sum of ten dollars (\$10.00) as a license fee, shall obtain a class B-1 license, which shall entitle him to pursue, hunt, shoot, kill and take game birds, as authorized by this act; and such non-resident on like application and on the payment of the sum of thirty dollars (\$30.00), as a license fee, shall obtain a license of class B-2, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess game animals, as authorized by this act.

Said applicant, if an alien, resident or non-resident, shall pay to the officer countersigning and issuing the license, the sum of ten dollars (\$10.00) as a license fee, and shall obtain a class C license, which shall entitle him to fish with hook and line or rod in hand, as authorized by this act; and such alien, on like application and on the payment of the sum of thirty dollars (\$30.00) as a license fee, shall obtain a license of class C-1, which shall entitle him to pursue, hunt, shoot, kill and take game birds, as authorized by this act; and such alien, on like application and on the payment

of the sum of fifty dollars (\$50.00) as a license fee, shall obtain a license of class C-2, which shall entitle him to pursue, hunt, shoot, kill, capture, take and possess game animals, as authorized by this act, provided, however, that any person in possession of first citizenship papers shall not be considered a resident of the state of Montana for the purpose of this act.

To every license, whether issued to a resident, non-resident or alien, which authorizes the licensee to kill elk or deer in this state, there shall be attached to said license certain tags, coupons or other markers, the form of which shall be prescribed by the state fish and game commission, and when any person shall take or kill any deer or elk under such license such person shall immediately thereafter detach from his license, and attach in plain sight to the carcass of said animal or animals the proper tag, coupon or other marker, which said tag, coupon or other marker shall be kept attached thereto so long as any considerable portion of the carcass remains unconsumed. When the proper tag, coupon or other marker is so attached to the said game so killed, the same may be possessed, used, stored and transported; provided the necessary permit to transport the same accompanies the shipment. To said license to hunt or take elk or deer shall also be attached a card, which said card shall on or before the first day of January of the year following the date of the issuance of said license, be returned by the holder of said license to the fish and game commission and a report made to said commission of the game taken under said license and the place where the same was taken, it being the intent of this act to require every licensee to make said report whether any game was taken under said license or not. It shall be unlawful and a misdemeanor punishable, accordingly, for anyone killing any deer or elk under said license, to fail or neglect to attach the tag, coupon or other marker so provided by said license to any deer or elk killed by them immediately after the same had been killed or to fail to keep said tag, coupon or other marker attached to said deer or elk or portions thereof while the same is possessed by him.

The applicant for a class D license, or trapper's license, must be the owner and in possession of a class A-2 license, and upon the payment of the sum of ten dollars (\$10.00) to the officer to whom the application for a class D license is made, shall receive and obtain a class D license, or trapper's license, which shall authorize the holder thereof to trap fur-bearing animals within the state at such times and in such manner as may be lawful so to do under the laws of this state and the regulations of the fish and game commission, and at such places as may be designated in said license.

All sums collected for licenses sold, or received for permits issued, from the sale of seized game, or from fines, or the sale of firearms or other chattels confiscated, from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the state fish and game commission from any and all other sources are hereby appropriated to and placed under control of the state fish and game commission. All moneys so received shall be remitted by the state fish and game warden to the state treasurer to be by him placed to the credit of the fish and game fund. [As amended Sec. 1, Ch. 174, L. 1939.]

3685.3. License fee—rights under license—term. An applicant for such temporary, non-resident license, if a citizen of the United States and a non-resident of the state of Montana, shall pay to the officer or person counter-

signing and issuing such license the sum of two dollars and fifty cents (\$2.50) as a license fee and shall obtain a license of class BB, which shall entitle the holder to fish with hook and line or rod in hand, as authorized and limited by law, for a period of ten (10) days from and after the date of issuance of such license. [As amended Sec. 1, Ch. 174, L. 1939.]

3685.5. Bounties paid from fish and game fund. The fish and game commission shall pay bounty claims for wild animals which have been filed, registered and approved in the office of the livestock commission; the state fish and game commission is empowered to and shall pay out of the state fish and game funds other than those funds derived from license fees paid by hunters and fishermen for bounties on predatory wild animals, as such bounty claims are presented, not exceeding seven thousands five hundred dollars (\$7,500.00) per calendar year.

The livestock commission shall, after the filing, registration and approval of the bounty claim or certificate in its office, deliver the same to the office of the state fish and game commission for rejection or approval. If such claim or certificate is rejected it shall be returned by the fish and game commission to the livestock commission and if approved it shall be delivered to the state board of examiners for allowance or disallowance. Provided, however, that nothing herein shall be construed as taking from the fish and game commission the exclusive power to administer said funds at their discretion.

If the state board of examiners approve and allow any such claim or certificate, they must endorse thereon over their signatures, "Approved for the sum of.....dollars", and transmit the same to the auditor, and the auditor must draw his warrant on the state fish and game fund for the amount so approved and allowed, in favor of the claimant, or his assigns, in the order in which the same is approved. [En. Sec. 2, Ch. 174, L. 1939.]

3696. Open season for elk—waste of meat unlawful.

Held, on application for writ of supervisory control to annul a temporary order restraining the State Fish and Game Commission from putting into effect its order lengthening the hunting season on elk in a certain locality in the state as fixed by section 3696, Revised Codes, that under section 3653 (as amended by the Laws of 1935) declaring that the statutes governing "such subjects" should continue to be in force and effect, except as altered or modified by the rules and regulations of

the commission, thus in effect empowering it to modify the existing statutes by its rules and regulations, and evidencing the legislative intention to place the entire matter of open and closed seasons on game in the hands of the commission, the commission had the power to lengthen the season and that, therefore, the restraining order was improperly issued. *State ex rel. v. District Court et al.*, 107 M 289, 290 et seq., 84 P 2d 798.

3696.1. Open season for elk in Teton county—authority of game warden to shorten.

References

State et al. v. District Court et al., 107 M 289, 291 et seq., 84 P 2d 798.

3696.4. Open season for elk in Park county—authority of fish and game commission to shorten.

References

State et al. v. District Court et al., 107 M 289, 291 et seq., 84 P 2d 798.

3697.2. Open season in Park county extended.

References

State et al. v. District Court et al., 107 M 289, 285, 84 P 2d 798.

3699.1. Big game hunters to wear red garment. It shall be unlawful for any person to hunt any of the big game animals in this state under any of the provisions of the laws of this state without such person wearing a cap or hat, shirt jacket, coat or sweater of a bright red color. [En. Sec. 1, Ch. 74, L. 1937.]

3699.2. Penalty for violation. Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two dollars and fifty cents (\$2.50) or more than five dollars (\$5.00). [En. Sec. 2, Ch. 74, L. 1937.]

3742. Unlawful to transport, possess or dispose of animals or parts of animals except under permit—exceptions—penalty. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game fish, wild bird, game or fur-bearing animal or part thereof, protected by the laws of this state, or coming from without the state whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by this act. The provisions of this section shall not apply to the plumage of wild waterfowl lawfully killed when purchased or sold for other than millinery purposes, or to birds or animals collected or possessed under a permit issued by the proper state fish and game warden for scientific or propagating purposes, nor shall the provisions of this section be construed to prohibit the purchase, sale or offering for sale, shipping, transporting, or possession for sale, any head, skin, or scalp, mounted or unmounted, or any full-sized mount of any game animal lawfully killed, provided the seller, before selling any such specimen shall first obtain from the state fish and game warden a permit authorizing him to sell it, nor to the sale of fur-bearing animals, or the skins of fur-bearing animals, except untagged beaver skins, nor to the export of fur-bearing animals or the skins of fur-bearing animals under proper permit of the state fish and game warden, provided, however, that the hides of elk and deer are specifically excluded from the provisions of this section. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as hereinafter provided. [As amended Sec. 1, Ch. 115, L. 1939.]

3776.7. Little Saint Joe game preserve. For the better protection and propagation of game animals and birds, the following described area in Mineral county, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Little Saint Joe game preserve. Beginning at a point on the south bank of the Missoula river where Dry creek flows into said river; running thence westerly along the south bank of Dry creek to the northwest quarter (NW $\frac{1}{4}$) of section twenty-seven (27) in township seventeen (17) north, range twenty-seven (27) west of the Montana principal meridian to the watershed between Murphy creek and the dry fork of Dry creek; running thence in a southerly direction along this divide to Blacktail mountain in the northeast quarter (NE $\frac{1}{4}$) of section four (4) in township sixteen (16) north, range twenty-seven (27) west of the Montana principal meridian; running thence in a southwesterly direction along the watershed between Thompson-Oregon creeks and Dry creek to the Montana-Idaho state line; thence westerly along said state line to a point where the Deer creek government trail intersects said state

line between Montana and Idaho; thence northerly along the east side of said Deer creek trail to a point where said trail intersects the south bank of the St. Regis river; thence down the south bank of the St. Regis river to its confluence with the Missoula river; thence up the south bank of the Missoula river to the point of beginning, except that the hereinafter described land now within the limits of said Little Saint Joe game preserve as above set forth by metes and bounds shall be excluded therefrom; to-wit: All privately owned land purchased prior to this act, under fence in sections thirteen (13), fourteen (14), fifteen (15), twenty-two (22), twenty-three (23) and twenty-four (24) in township seventeen (17) north, range twenty-seven (27) west of the Montana principal meridian. [As amended Sec. 1, Ch. 147, L. 1939.]

CHAPTER 309, REGULATION OF RAILROADS—BOARD OF RAILROAD COMMISSIONERS

3809. Action to determine reasonableness of rates or classification.

Three judge district court held to have jurisdiction of suit by railroad to enjoin Montana Railroad Commissioners from enforcing orders for continuation of operation of certain railroad's trains since under Montana statute such review consti-

tuted exercise of judicial function. *Great Northern Ry. Co. v. Nagle et al.*, 16 F. S. 532.

Reference

Montana Power Co. v. Montana Service Commission, 12 F. S. 946.

3842. Railroad commission may order electric signal bells installed.

An instruction given in an action for personal injuries by a motorist who collided, in the night-time, with a freight train standing on a crossing partly within and partly without the city limits, and based on section 3842, Revised Codes, making it the duty of motorists to stop before proceeding over a crossing outside of cities, held inapplicable in view of the fact that the court failed to advise the jury that the statute only applied to crossings outside the city limits, and therefore failure of the jury to follow it (rule 7, *supra*) did not justify reversal of the judgment in favor

of plaintiff. *Jarvella v. Northern Pacific Ry. Co.*, 101 M 102, 113, 53 P 2d 446.

While one of the highest obligations of a railway is to protect the public at highway crossings, and the law in that behalf requires the presence of watchmen and warning devices for the primary purpose of warning the traveling public of approaching trains, the absence of such devices does not excuse the traveler charged, as he is, with a degree of care commensurate with the danger. *Incret v. Chicago, M., St. P. & P. Co.*, 107 M 394, 415, 86 P 2d 12.

CHAPTER 310, MOTOR CARRIERS—SUPERVISION AND REGULATION

3847.7. Revocation of certificate or privilege after hearing—right of review.

References

Northern Pac. Ry. Co. v. Board of R. R. Commissioners, 13 F. S. 529.

3847.8. Certificate required of class A motor carriers—contents of application—fee.

References

Northern Pac. Ry. Co. v. Board of R. R. Commissioners, 13 F. S. 529.

CHAPTER 313, REGULATION OF PUBLIC UTILITIES—PUBLIC SERVICE COMMISSION

3881. "Public utility" defined.

References

Sherlock et al. v. Greaves et al., 106 M 206, 221, 76 P 2d 87.

3882. Power to prescribe rules of procedure—judicial power.

On application for a writ of supervisory control to annul a writ of prohibition, issued by the district court, restraining the Public Service Commission from entertaining a complaint of farmers living along the course of a river on which a hydro-electric company maintained a dam for storing water for use in its operations incident to generating electricity for public use, alleging that the utility by storing the water was depriving them of the use thereof for irrigation purposes, thus in

effect calling upon the commission to adjudicate water rights between the complainants and the company, held, that the remedy of the farmers was by recourse to the courts, that under section 3882, Revised Codes, the commission is expressly precluded from exercising judicial functions in the execution of its powers, and that therefore the trial court acted properly in issuing the writ of prohibition. *State et al. v. District Court et al.*, 107 M 240, 243, 84 P 2d 335.

3899. Fixing rates and making regulations on hearing—complaint by public utility.**References**

State et al. v. District Court et al., 107 M 240, 246, 84 P 2d 335.

3905. Enforcement of rates or charges.**References**

Montana Power Co. v. Public Service Commission, 12 F. S. 946.

3906. Action to set aside rates or charges fixed by commission. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to such commission. Any party in interest being dissatisfied with the order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing or prescribing any rule, regulation, practice, or service, may apply to the district court having jurisdiction, for, and upon proper showing there shall be issued by such court, an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. All orders of the commission shall become operative within twenty days after the filing of the order by the commission subject to the right of stay and injunction as hereinbefore provided. As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of

the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination or in proceedings involving rates the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

In all actions under this act, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be. [As amended Sec. 1, Ch. 56, L. 1937.]

The Act of May 14, 1934 denying jurisdiction to the Federal District Court of any suit to restrain the enforcement of any order of a state commission held inapplicable to a suit in Montana in view of this section which purports to deny all preliminary relief in such cases in State Courts. *Mountain States Co. v. Public Service Co.*, 299 U. S. 167, reversing *Montana Power*

Co. v. Public Service Commission, 12 F. S. 946.

References

State v. District Court et al., 103 M 563, 565, 63 P 2d 1032; *State et al. v. District Court et al.*, 107 M 240, 250, 84 P 2d 335; *East Ohio Gas. Co. v. City of Cleveland*, 23 F. S. 965.

3911. Mandamus, injunction, and other remedies.

References

Montana Power Co. v. Public Service Com., 12 F. S. 946.

CHAPTER 315-A, UNFAIR PRACTICES ACT

3946.1. Price discrimination—when unlawful—exceptions—liability. It shall be unlawful for any person, firm, or corporation, doing business in the state of Montana and engaged in the production, manufacture, distribution

or sale of any commodity, or product, or service or output of a service trade, of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quantity and in the actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity. This act shall not be construed to prohibit the meeting in good faith of a competitive rate, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of this section, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. [En. Sec. 1, Ch. 80, L. 1937.]

Act held constitutional.

Associated Merchants of Montana v. Ormsher et al., 107 M 530, 540 et seq., 86 P 2d 1031.

3946.2. Persons responsible—unlawful intent. Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids, directly or indirectly in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts. [En. Sec. 2, Ch. 80, L. 1937.]

3946.3. Selling at less than cost—definitions. It shall be unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state, to sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade for the purpose of injuring competitors and destroying competition, and he or it shall also be guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties set out in section 3946.12 for any such act.

The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all overhead expenses of the producer;

and as applied to distribution "cost" shall mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of such business and must include, without limitation the following items of expense: Labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising. [En. Sec. 3, Ch. 80, L. 1937.]

3946.4. Establishing cost. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale. (En. Sec. 4, Ch. 80, L. 1937.)

3946.5. Injunction—evidence. In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act. [En. Sec. 5, Ch. 80, L. 1937.]

3946.6. Fair prices for agricultural products. The following method shall be used in determining fair prices for agricultural products sold on local markets, in any trade area, district or city in which the major portion of any agricultural commodity or product is produced within or adjacent to said trade area, city or district.

Whenever 75% of producers of any agricultural product or commodity marketing said products or commodities within any trade area, district or city shall determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be deemed the fair price for such product or commodity under the terms of this act.

Such producers through their regular constituted agents shall file with the Montana trade commission such fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers and consumers of said agricultural products or commodities. Any organization representing consumers shall not be denied representation at such a meeting.

After the establishment of such a schedule of fair prices for said agricultural products or commodities, it shall be a violation of this act for any producer, jobber, wholesaler or retailer to sell or buy any agricultural com-

modity or product below such price as established by the Montana trade commission and such action shall be deemed a violation of this act and punishable under the terms provided in this act. [En. Sec. 5-A, Ch. 80, L. 1937.]

3946.7. Exceptions. The provisions of sections 3946.3, 3946.4 and 3946.5 shall not apply to any sale made:

(a) In closing out in good faith, the owner's stock or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product, or service or output of a service trade, in the same locality or trade area.

Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this act. [En. Sec. 6, Ch. 80, L. 1937.]

3946.8. Rebates, commissions and discounts—when unlawful—cooperatives excepted. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to the penalties set out in section 3946.12.

Provided, however, that nothing in this act shall prevent a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association. [En. Sec. 7, Ch. 80, L. 1937.]

3946.9. Duty of attorney general—procedure—injunction. Upon the third violation of any of the provisions of sections 3946.1 to 3946.7, inclusive, of this act by any corporation, it shall be the duty of the attorney general to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such corporation, and to permanently enjoin it from transacting business in this state. If in such action the court shall find that such corporation is violating or has violated any of the provisions of sections 3946.1 to 3946.7, inclusive, of this act, it must enjoin said corporation from doing business in this state permanently or for such time as the court shall order, or must annul the charter, or revoke the franchise of such corporation. [En. Sec. 8, Ch. 80, L. 1937.]

3946.10. Contracts violating provisions of act illegal. Any contract, express or implied, made by any person, firm or corporation in violation of any of the provisions of sections 3946.1 to 3946.7, inclusive, of this act, is declared to be an illegal contract and no recovery thereon shall be had. [En. Sec. 9, Ch. 80, L. 1937.]

3946.11. Violations—who may enjoin—damages—testimony of defendant. Any person, firm, private corporation or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of sections 3946.1 to 3946.7, inclusive, of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of sections 3946.1 to 3946.7, inclusive, of this act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

Any defendant in an action brought under the provisions of this section may be required to testify under the provisions of the code of civil procedure of this state, in addition the books and records of any such defendant may be brought into court and introduced, by reference, into evidence; provided, however, that no information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under the provisions of sections 3946.1 to 3946.7, inclusive, and section 3946.12. [En. Sec. 10, Ch. 80, L. 1937.]

3946.12. Penalties for violations. Any person, firm or corporation, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of sections 3946.1 to 3946.7, inclusive, of this act, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00), or by imprisonment not exceeding six months or by both said fine and imprisonment, in the discretion of the court. [En. Sec. 11, Ch. 80, L. 1937.]

3946.13. Montana trade commission to administer act—procedure and process—cease and desist orders—review by courts. The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

Whenever the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five days after the service of said complaint. Any such complaint

may be amended by the commission in its discretion at any time five days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Any person, firm or corporation required by an order of the commission to cease and desist from any such act or conduct may obtain a review of such order in any district court of the state of Montana within any district where the act or conduct in question was done or carried on, or where such person, firm or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission as to the facts, if supported by sufficient evidence, shall be conclusive. To the extent that the order of the commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such

modified or new findings, which, if supported by sufficient evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court upon appeal as in other cases of judgments of such courts; provided, however, that said appeal shall be taken within thirty days from the date of the entry of such judgment or decree.

Such proceedings in the district court shall be given precedence over other civil cases pending therein, and shall be in every way expedited. Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

An order of the commission to cease and desist shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; (2) upon the expiration of the time allowed for filing a notice of appeal to the supreme court, if the order of the commission has been affirmed, or the petition for review dismissed by the district court and no notice of appeal to the supreme court has been duly filed, or (3) upon the expiration of thirty days from the date of issuance of the remittitur of the supreme court, if such court directs that the order of the commission be affirmed or the petition for review dismissed.

If the supreme court directs that the order of the commission be modified or set aside, the order of the commission rendered in accordance with the mandate of the supreme court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission shall become final when so corrected.

If the order of the commission is modified or set aside by the district court and if (1) the time allowed for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed or (2) the decision of the district court has been affirmed by the supreme court, then the order of the commission rendered in accordance with the mandate of the district court shall become final on the expiration of thirty days from the time such order of the commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission shall become final when so corrected.

If the supreme court orders a rehearing; or if the case is remanded by the district court to the commission for a rehearing, and if (1) the time for fil-

ing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed, or (2) the decision of the court has been affirmed by the supreme court, then the order of the commission rendered upon such rehearing shall become final in the same manner as though no prior order of the commission had been rendered.

Any person, firm or corporation who violates an order of the commission to cease and desist after it has become final, and while such order is in effect shall forfeit and pay to the state of Montana a penalty of not more than one thousand dollars (\$1,000.00) for each violation, which shall accrue to the state of Montana and may be recovered in a civil action brought by the state of Montana.

The remedies and method of enforcement of this chapter provided for in this section shall be deemed concurrent and in addition to the other remedies provided in this chapter. [En. Sec. 12, Ch. 80, L. 1937; Amd. Sec. 1, Ch. 50, L. 1939.]

3946.14. Establishing cost survey—power of commission—determination of facts. The Montana trade commission is hereby empowered and directed whenever application therefor shall have been made by ten or more persons, firms or corporations within any particular retail trade or business to establish the cost survey provided for in section 3946.5. When petition for such cost survey has been so presented to the commission, the commission shall, as soon as possible, fix a time for a public hearing upon the question of whether such cost survey should be established. Such hearing shall be held at the office of said commission and upon such notice as the commission may by rule require; provided, however, that notice of such hearing shall be published for at least two successive weeks in such daily newspaper or newspapers as the commission may designate as most commonly circulated in the counties to be affected by such cost survey. Said notice shall further state the locality or area in respect to which said cost survey is proposed to be established and the particular retail trade or business to be affected thereby.

At the time fixed in said notice any person, firm or corporation shall be entitled to appear and be heard by the commission upon all questions to be determined by it as provided in this section. If the commission shall determine that a cost survey shall be established, it shall at the same hearing proceed to classify and define the particular retail trade or business, or parts thereof, to be affected thereby, determine and delimit the particular area within which such retail trade or business shall be so affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage or percentages of invoice or replacement cost which would probably be incurred by the most efficient person, firm or corporation within such retail trade or business within such area.

The percentage or percentages so fixed and determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person, firm or corporation in such retail trade or business and within the area, affected by such cost survey. [En. Sec. 2, Ch. 50, L. 1939.]

3946.15. Investigations—attendance and examination of witnesses—self-incrimination. The Montana trade commission for the purpose of conducting hearings and investigations which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it by this chapter shall have the following powers:

The commission, or its duly authorized agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the commission shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the commission, or before its duly authorized agent conducting the investigation. Any member of the commission or any agent, duly authorized by the commission for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place within the state of Montana at any designated place of hearing.

In any case of contumacy or refusal to obey a subpoena issued to any person, any district court of the state of Montana, within any district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person, an order requiring such person to appear before the commission, or its duly authorized agent, and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in abedience to the subpoena of the commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [En. Sec. 3, Ch. 50, L. 1939.]

3946.16. Unlawful to falsify invoices. It shall be unlawful for any person, partnership, firm, corporation, joint stock company or other association, as defined in section 3946.3, to change, alter, substitute or falsify any invoice where such practice tends to injure a competitor or to destroy competition or to mislead any court or commission. Said practice is unfair trade practice and any person, firm, partnership, corporation or association resorting to such trade practice shall be guilty of a misdemeanor and, on conviction, shall be subject to the penalties provided in section 3946.12. [En. Sec. 4, Ch. 50, L. 1939.]

3946.17. Saving clause. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional. [En. Sec. 13, Ch. 80, L. 1937.]

3946.18. Purpose of act. The legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be literally construed that its beneficial purposes may be subserved. [En. Sec. 14, Ch. 80, L. 1937.]

3946.19. Name of act. This act shall be known and designated as the "Unfair Practices Act". [En. Sec. 15, Ch. 80, L. 1937.]

3946.20. Emergency measure. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall therefore go into immediate effect. The facts constituting the necessity are as follows:

The sale at less than cost of goods obtained at forced, bankrupted, close out, and other sales outside of the ordinary channels or trade is destroying healthy competition. If such practices are not immediately stopped, many more businesses will be forced into bankruptcy. In order to prevent such occurrences, it is necessary that this act go into effect immediately. [En. Sec. 16, Ch. 80, L. 1937.]

CHAPTER 316, REGULATION OF STOCK-BROKERS AND INVESTMENT COMPANIES (BLUE SKY LAWS)

4026. Investment company defined.

References

Hodgkiss v. Northland Petroleum Consol., 104 M 328, 57 P 2d 811.

4028. Securities to which provisions of act not applicable. The provisions of this act shall not apply to the following securities.

1. Securities of the United States or of any foreign government, with which the United States maintains diplomatic relationship at the time of the sale thereof, or of any state or territory, or of any county, city, township, district or other public taxing subdivision of any state or territory of the United States.

2. Securities of public or quasi-public corporations, the issues of which are regulated by a state officer or board of this state, or by a state officer or board of similar authority, of any state or territory of the United States, or securities senior thereto.

3. Securities of state or national banks or trust companies or building and loan associations authorized by the superintendent of banks to do business in this state.

4. Policy contracts of insurance companies licensed to do business in this state.

5. Securities of any domestic corporation not organized for profit.

6. Securities of any co-operative association organized in good faith under the laws of this state, exclusively for the purpose of conducting upon the co-operative plan, among its stock-holders, any or all of the following business: Any agricultural, dairy, livestock or produce business, the business of selling marketing or otherwise handling any agricultural, dairy or livestock products, or other produce raised or produced by the stockholders of such association, or by any co-operative association, the manufacture of any products from any agricultural, dairy or livestock products, or other

produce, produced by the members of such association, any business incidental to any of the above purposes; or the securities of any cooperative association organized in good faith under the laws of this state, for the purpose of conducting the business of operating a rural telephone system or systems or the business of operating a rural electrification system or systems for the transmission or distribution of electric energy on a co-operative basis, or the sale and distribution of electrical and plumbing appliances under the provisions of the federal rural electrification act.

7. Securities listed on the New York stock exchange, the Boston stock exchange, the board of trade of the city of Chicago, Chicago stock exchange or the New York curb exchange, which securities have been so listed pursuant to official authorization by such exchange, and all securities senior to any securities so listed or represented by subscription rights which have been so listed or evidence of indebtedness guaranteed by companies, any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect.

8. Notes secured by mortgages for real estate located in the state of Montana.

9. Securities sold by the owner for the owner's account exclusively where the owner is not the issuer or an underwriter thereof, when not made in the course of continued and repeated transactions of a similar nature.

10. Securities of a corporation where the persons holding the same shall not exceed fifty in number. [As amended Sec. 1, Ch. 120, L. 1937.]

4038. Action to vacate findings of commissioner—appeals.

References

Montana Power Co. v. Public Service Co., 12 F. S. 946.

CHAPTER 318, UNIFORM WAREHOUSE RECEIPTS ACT

4095. Procedure on suit when goods are claimed by more than one person.

The fact that an elevator company in its action seeking interpleader of various parties under special section 4095, Revised Codes, a part of the Uniform Warehouse Receipts Act, and not under section 9087, the general interpleader statute, to determine ownership of a quantity of grain held in storage, on which storage charges had not been paid, in its complaint sought affirmative relief by way of payment of such charges and cancellation of certain storage tickets erroneously issued to the grower, did not defeat its right to maintain the suit, section 4095, contemplating that all issues between the parties should be settled. *Rocky Mt. Elevator Co. v. Bammel et al.*, 106 M 407, 411 et seq., 81 P 2d 673.

Id. Where the vendor of farm lands upon relinquishment of the contract of sale by the purchaser, agreed that the latter should harvest the crop and store it in an elevator, the vendor to be entitled to receive a certain sum of money of the proceeds, the balance to belong to the purchaser, and in an action in interpleader

brought by the elevator company under section 4095, Revised Codes, to determine ownership of the grain stored, the vendor was awarded the amount claimed by him, he was in no position to urge an appeal that the district court erred in not ordering a marshaling of the purchaser's assets, asked for on the ground that the latter was indebted to another defendant under a mortgage on the grain and other property; the vendor having received all he was entitled to, and the other defendant not complaining, he was no longer interested in what disposition the purchaser made of his share of the grain.

Id. In an action in interpleader by an elevator company, under section 4095, Revised Codes, to determine ownership of grain held in storage by it and claimed by several parties, the trial court in ordering that the company, not responsible for the litigation, should be awarded its costs of suit and that each of the defendants should pay his own costs, properly exercised its discretion under section 9789.

4096. When warehouseman may retain goods in case of adverse claim.

References

Rocky Mt. Elevator Co. v. Bammel et al., 106 M 407, 413, 81 P 2d 673.

CHAPTER 319, REGULATION OF TITLE ABSTRACTERS

4139.12. No abstract books or indices required under certain conditions.

Any person, firm or corporation not having the abstract books or indices as required by section 4139.1, and who, upon the first day of March, 1931, is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the state of Montana, pursuant to section 4140, of the Revised Codes of 1921, and who shall make application to said board prior to the expiration of such certificate of authority and who shall comply with the other requirements hereof, providing for a registered abstracter, bond and other provisions, shall, upon the payment of five dollars as is herein provided, be issued a certificate of authority under the provisions of this act. Any person, firm or corporation, desiring to engage in the business of making and compiling abstract of title to real property in any county in this state and who is not at the time of making application to said board for a certificate of authority provided with a completed set of abstract books or indices to the records in the county clerk and recorder's office of such county as required by section 4139.1, and who can comply with the other requirements hereof providing for a registered abstracter, bond and other provisions, shall, upon submitting satisfactory proof to said board that he has been and on the first day of January, 1939, was the holder of a temporary certificate, issued by said board, and is engaged in good faith in the preparation of such abstract books or indices and that he intends in good faith to complete the same, and upon payment of five dollars shall be issued a temporary certificate of authority good for a period of one year, and upon good cause being shown to said board, such certificate shall be renewed from year to year until and including the year 1943, upon payment of five dollars for each annual certificate. [As amended Sec. 1, Ch. 82, L. 1939.]

CHAPTER 327, REGULATION OF COMMERCIAL FERTILIZER

4208.2. Statement required on mixed fertilizer container. Each lot or parcel of mixed commercial fertilizer sold, offered or exposed for sale, or distributed within this state shall have on each package or container, in a conspicuous place on the outside, a legible or plainly printed statement in the English language, clearly and truly certifying:

(a) Weight. The net weight of the contents of the package, lot or parcel.

(b) Name. The name, brand, or trade mark.

(c) Manufacturer. The name and principal address of the manufacturer or person responsible for placing the commodity on the market.

(d) Nitrogen. The minimum percentage and source of nitrogen in available form.

(e) Potash. The minimum percentage and source of potash K_2O , soluble in distilled water.

(f) Phosphoric acid. The minimum percentage and source of available phosphoric acid P_2O_5 and also the minimum total phosphoric acid content.

No other statement of chemical compounds, except as above, shall be placed on any such container.

All statements regarding chemical contents on labels must be in print or type of uniform size. [As amended Sec. 1, Ch. 183, L. 1939.]

4208.6. Sample for tests and analyses. The chemist of the Montana agricultural experiment station, shall, at least once each year, obtain at least one sample of each brand of commercial fertilizer offered for sale in this state to make proper analyses and tests to determine (1) the net weight of the contents of each package examined; (2) the percentage of nitrogen in available form; (3) the percentage of potash K_2O , soluble in distilled water, and (4) the percentage of available and total phosphoric acid P_2O_5 , and to inspect labels on each parcel or container, and determine whether or not they conform to the provisions of this act. [As amended Sec. 2, Ch. 183, L. 1939.]

4208.7. Method of taking and preserving samples—manner of analyzing. All samples taken under the provisions of section 4208.6 must be composites of equal portions taken from at least five (5) original packages in such manner as to be truly representative of the contents of the package. Such samples shall be thoroughly mixed and immediately placed in containers which exclude air. Analyses of such samples shall be made in accordance with the methods of the association of official agricultural chemists. [As amended Sec. 3, Ch. 183, L. 1939.]

4208.9. Report of analyses—expense, how paid. All such analyses of commercial fertilizer, as required by this act, shall be reported to the commissioner of agriculture of the state of Montana. All expenses for such analyses, together with supplies of all kinds needed for making the same, and also the traveling and other expenses incurred in collecting samples, as required herein, together with all administrative expenses including the expense of publishing reports, shall be provided and paid out of the fund arising from the license fees provided for in section 4208.5, upon verified claims filed with and audited by the commissioner of agriculture and by him presented for allowance by the state board of examiners, in the same manner as all claims contracted for and in behalf of the state of Montana. It shall be the duty of the commissioner of agriculture to enforce this act and for that purpose, he shall make all proper and necessary rules and regulations. [As amended Sec. 4, Ch. 183, L. 1939.]

4208.10. Report of chemist concerning analyses—disposal of surplus license fees. The chemist of the Montana agricultural experiment station shall annually, not later than October fifteenth, make a report to the commissioner of agriculture containing a correct statement of all analyses made. The commissioner of agriculture shall, when funds are available, publish such report separately or in conjunction with any regular report of the department of agriculture. Any surplus of license fees remaining on the first day of January following the close of each fiscal year shall then be placed to the credit of the Montana agricultural experiment station. [As amended Sec. 5, Ch. 183, L. 1939.]

CHAPTER 330, STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES

4229.1. Hay dealers' license required. It shall be unlawful for any person, firm or corporation to buy, or offer to buy, for the purpose of resale any hay, unless he shall have first obtained from the commissioner of agriculture, labor and industry of the state of Montana, a license permitting

such person, firm or corporation to engage in the business of buying and selling hay at wholesale within the state of Montana. [En. Sec. 1, Ch. 204, L. 1937.]

4229.2. Bond required for license. No person, firm or corporation shall be eligible to receive or obtain such license unless he shall first file with such commissioner a bond running to the state of Montana for the benefit of the growers of hay, dealing or who may deal with such licensee, conditioned on the faithful performance by such licensee of all contracts made by him for the purchase of hay from the growers thereof. [En. Sec. 2, Ch. 204, L. 1937.]

4229.3. Amount of bond. The bond provided for in the preceding section shall be in such penal sum as said commissioner shall determine, based upon the estimated amount of business to be done by the licensee, during the year for which said license is to be issued; provided, however, that said bond shall be in a sum of not less than one thousand dollars (\$1000.00). [En. Sec. 3, Ch. 204, L. 1937.]

4229.4. Term of license—fee. The license herein provided for shall be an annual license and shall be valid for the calendar year in which issued, and shall be issued only upon the payment of the sum or fee of fifteen dollars (\$15.00). [En. Sec. 4, Ch. 204, L. 1937.]

4229.5. Rules and regulations. The commissioner of agriculture, labor and industry shall have the right, and it shall be his duty, to make reasonable rules and regulations with reference to the form of application, the terms of the bond, and the form of license hereunder, as convenience and good practice may require, and for the enforcement of this act. [En. Sec. 5, Ch. 204, L. 1937.]

4229.6. Unlawful to misrepresent quality of hay. It shall be unlawful for any person, firm or corporation to advertise, represent, or hold out any hay for sale as of the quality or as meeting the requirements of section 4229, Revised Codes of Montana, 1935, unless such hay shall actually meet and conform to the requirements thereof; provided that it shall be optional for any grower of hay or any dealer therein to cause to be inspected or graded any hay which he may sell or offer for sale, or which he may buy or offer to buy. [En. Sec. 6, Ch. 204, L. 1937.]

4229.7. Application of section 2443.3 to hay. Section 2443.3 of the Revised Codes of Montana, 1935, shall not apply nor be construed to apply to hay. [En. Sec. 7, Ch. 204, L. 1937.]

4230. Sale of other than standard hay forbidden. [Repealed Sec. 8, Ch. 204, L. 1937.]

4233. Weights and measures inspected by county sealer. [Repealed Sec. 31, Ch. 146, L. 1939.]

4235. State sealer of weights and measures—deputies—bonds. The commissioner of agriculture is hereby declared to be and is the ex-officio state sealer of weights and measures. He shall appoint as many deputy sealers of weights and measures as he may deem necessary, subject to existing laws. Each such deputy shall give a bond to the state of Montana in the sum of one thousand dollars (\$1,000.00) conditioned upon the faithful performance of his duties. [As amended Sec. 1, Ch. 146, L. 1939.]

4236. Supervision of weights and measures—maintenance of standards. Said state sealer of weights and measures shall have general supervision over the weights and measures of the state. He shall take charge of the standards of weights and measures and shall procure at the expense of the state any weights and measures that may be necessary, and shall cause them to be kept and in no case removed from a fire-proof vault, except for the purpose of certification and repairs. He shall maintain said standards in good order and shall submit them once in ten years (10) to the national bureau of standards for certification. [As amended Sec. 4, Ch. 146, L. 1939.]

4237. Authority of state sealer. The state sealer of weights and measures shall be authorized to perform any and all acts by this act authorized. [As amended Sec. 5, Ch. 146, L. 1939.]

4238. Duty of sealer of weights and measures as to inspection. Said state sealer of weights and measures, or his deputies, shall visit the various counties, cities and towns in the state, and in the performance of his duties, he, or his deputies, shall inspect weights and measures and balances which are used for buying or selling goods, wares, merchandise, or other commodities, and for public weighing, and shall test or calibrate weights and measures, weighing devices or apparatus used as test standards in the state. He, or his deputies, shall, at least once a year, test all scales, weights and measures used in checking the receipts and disbursements of supplies of every state institution, and shall report in writing his findings to the executive officer of the institution concerned. The state sealer of weights and measures shall prepare a certificate of suitable size which shall be issued to the owner or person in charge after inspection, and a proper seal to be attached or affixed to all weights and measures or measuring devices so tested. Said certificates and seals shall bear the signature of the state sealer of weights and measures, or shall be signed by a deputy sealer of weights and measures. Such certificate shall be numbered in consecutive order, and shall show the date of issuance. It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel or remove any such certificate, or any seal, stamp or mark provided for by this act, or cause or permit the same to be done with intent to mislead, deceive, or to violate any of the provisions of this act, without the written consent of the state sealer of weights and measures or that of the deputy who inspected the weighing device. [As amended Sec. 6, Ch. 146, L. 1939.]

4239. Inspection and certificates. [Repealed Sec. 31, Ch. 146, L. 1939.]

4240. Penalty for using weighing or measuring devices not inspected and certified. From and after the passage and approval of this act it shall be unlawful for any person or persons, firm, or co-partnership, corporation, or association of persons engaged in the trade of buying or selling, purchasing or disposing of, or dealing in any merchandise or commodities to any person, or persons, in the state of Montana, to sell or purchase by weight or by measure, without first having had the weights and measures, scales or measuring devices used by them, or in their possession, for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a seal attached thereto by the state sealer of weights and measures, or by his deputies. Such seal shall be attached or

placed in a conspicuous place upon such weighing or measuring device. Any person or persons making use of weighing devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing device and must promptly report the installation of any new weighing device. Any person or persons using any weight or measure, or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor. [As amended Sec. 7, Ch. 146, L. 1939.]

4241. Duty of tradesmen and public weighers to have scales adjusted. Every person or persons, firm, co-partnership or corporation engaged in the trade of buying and selling, or as a public weigher or user of weights and measures shall, at least once each year, have his weights, measures, balances and scales adjusted and sealed. [As amended Sec. 8, Ch. 146, L. 1939.]

4242. Inspection of scales—drivers to exhibit weight tickets. At least once each year, the state sealer of weights and measures, or his deputies, shall visit the places of business and enter upon the carts, wagons or vehicles then in use for the business of all persons engaged in the trade of buying and selling, or selling, who have weights, measures, or balances which have not been sealed during the current year, and try, adjust and seal the same. All drivers of vehicles used in transporting any commodity which has been weighed shall, upon demand of the sealer of weights and measures, or his deputies, exhibit for examination the weigh ticket or bill of the commodity weighed or transported, showing the weight thereof. [As amended Sec. 9, Ch. 146, L. 1939.]

4243. Authority to inspect weighing and measuring devices. The state sealer of weights and measures, or his deputies shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instruments or mechanical devices for measurement, and the tools, appliances, or accessories connected with any and all of such instruments or measurements, used, kept for use, sold, offered for sale, or kept for sale, or employed within the state by a proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by such persons for sale, hire, or award. Provided also, that the state sealer of weights and measures, or his deputies, shall at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state, shall be tested as to the correctness of both weight and arithmetical values indicated by them. [As amended Sec. 10, Ch. 146, L. 1939.]

4244. Authority to inspect weight of commodities offered for sale. The sealer of weights and measures, or his deputies, shall at irregular intervals examine all commodities sold and offered for sale and test them for correct weight, measure or count. And he, or his deputies, shall have the power to and shall, from time to time, weigh or measure packages or amounts of

commodities of whatsoever kind kept for the purpose of sale, offered for sale, or sold, or in the process of delivery, in order to determine whether the same contain the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence any such amounts of commodities or package or packages which shall be found to contain a less amount than that represented. He, or his deputies, shall, for the purposes above mentioned, and in the general performance of their official duties, enter or go into or upon, with or without formal warrant, any stand, place, building, or premises, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any dealer whatsoever and require him, if necessary, to proceed to some place specified by the sealer of weights and measures, or his deputies, for the purpose of making the proper tests; and in the exercise of such duties they shall have full police power to enforce any and all reasonable measures for testing such weights and measures, and also in ascertaining whether false or short weights and measures are being given in any sales or transfer of articles or merchandise taking place within the state. Whenever the state sealer of weights and measures, or his deputies, have reason to believe that any person or persons or corporation is violating the provisions of this act, or any act relating to weights and measures, they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated the provisions of this act, or any act relating to weights and measures, or such evidence may be submitted direct to the attorney general of the state, who shall have authority to prosecute such persons in the proper county. [As amended Sec. 11, Ch. 146, L. 1939.]

4245. Inspection of track scales used by common carriers—penalty for short weights. (a) All track scales used for the purpose of weighing freight in carload lots within the state shall be under the control and direction and jurisdiction of the state sealer of weights and measures, and subject to inspection by him, or his deputies.

(b) The state sealer of weights and measures, or his deputies, shall have power either on their own motion or on complaint being made, to determine whether any such track scales are defective or inefficient, or whether the time, manner, or method of using same is unreasonable, ineffective, or unjust, and shall have power to condemn any such scale found to be defective or inefficient, and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule, or regulation as may be deemed necessary or advisable.

(c) Any person or persons who shall knowingly and wilfully sell, or direct or permit any person or persons in his or their employ to sell any commodity or article of merchandise and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or stockyards for the purpose of weighing livestock, hay, grain, coal, or other articles, who shall knowingly and wilfully report any false or untrue weight, whereby any other person or persons may be defrauded or injured, shall be deemed guilty of a misdemeanor, and shall be answerable to the party defrauded or injured in double damages. [As amended Sec. 12, Ch. 146, L. 1939.]

4246. Weight of commodities offered for sale to be indicated on container—penalty for selling short weight merchandise—violations—false measures—measure of berries. It shall be unlawful for any person or persons, association, or corporation, to sell or offer for sale in this state any commodity or article of merchandise in a package or container, without having such package or container labeled in plan, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents, designated, where not otherwise provided, by lettering of at least 1/9 inch in height (8 point type). Provided, that nothing in this section shall prevent the sale of a commodity within the provisions of this act when such sale is made from bulk and the quantity is weighed, measured, or counted for the immediate purpose of such sale; provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream, offered for sale or sold in packages or containers at a price of ten cents (10c) or less per such package or to commodities or articles of merchandise in packages or containers which are sold by the aggregate net weight of the contents thereof.

1. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid. It shall be unlawful for any person to sell solid substances by liquid measure.

2. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance, or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise, upon which scale or device the graduations or indications are falsely or inaccurately placed, either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision, and the view on the customer's side shall never be, in any manner, obstructed. The selling and delivering of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated

weight, measure or quantity for individual packages not to exceed three per cent is permissible; provided, that the variation is as often above as below the weight, measure or quantity stated.

Any person, who by himself, or his employee or as a proprietor or manager, shall refuse to exhibit any article, commodity or the container of any commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state sealer of weights and measures, or his deputies, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided, shall be guilty of a misdemeanor.

The term container used in this act is hereby defined to be any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale, or to be offered or exposed for sale. No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed as to facilitate the perpetration of deception or fraud. The state sealer of weights and measures, or his deputies, may seize any container which facilitates the perpetration of deception or fraud. By order of a court having jurisdiction the containers seized shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose, to insure against their use in violation of this section.

There are hereby established the following standard net weights for all berry containers, or hallocks in which strawberries, red or black raspberries, blackberries, currants, gooseberries, or any other berries are sold or offered for sale in this state:

(a) Pint hallocks or containers shall be 33.6 cubic inches in capacity and the contents thereof shall have a net minimum weight of twelve (12) ounces.

(b) Quart hallocks or containers shall be 67.2 cubic inches in capacity and contents thereof shall have a net minimum weight of twenty-four (24) ounces. The sale of, or having in possession for sale, any strawberries, red or black raspberries, blackberries, currants, gooseberries or any other berries in containers or hallocks not complying with the provisions of this act shall be a misdemeanor punishable, upon conviction, by a fine of not less than ten dollars (\$10.00), nor more than twenty-five dollars (\$25.00). [As amended Sec. 13, Ch. 146, L. 1939.]

4247. Record—report. The state sealer of weights and measures shall keep a complete record of all work done under his direction, and shall make a biennial report to the governor not later than the first of January of each year preceding the meeting of the legislative assembly. [As amended Sec. 14, Ch. 146, L. 1939.]

4248. Penalty for false certificates by sealers of weights and measures. Any person authorized to seal weights and measures in accordance with this act who shall, without duly verifying the weights and measures or any weighing device of any person by comparison with the standards of weights and measures, stamp any such weighing device or measure, or attach thereto a seal that said weighing device or measure has been duly tested, is hereby declared, upon conviction thereof, to be guilty of a misdemeanor. [As amended Sec. 15, Ch. 146, L. 1939.]

4249. Denomination of weights to be marked thereon—testing apothecaries' weights and measures. Every weight for use in trade, except when the small size of the weight renders it impracticable, shall have the denomination of such weight permanently marked on the top side thereof in legible figures or letters; and every measure of capacity for use in trade shall have the denomination and kind thereof permanently marked on the outside of such measure in legible figures or letters. A weight or measure not in conformity with this section shall not be sealed by the state sealer of weights and measures, or his deputies.

(a) Apothecaries and all other persons dealing in drugs, medicine and merchandise, commonly sold by apothecaries' weight or by apothecaries' liquid measure, shall at least once in two years cause such weights and measures so used to be tested and sealed by officers authorized under this act to inspect weights and measures. [As amended Sec. 16, Ch. 146, L. 1939.]

4250. Prohibition against using weights pending adjustment. If any weights, measures, or balances can be readily adjusted by such means as the sealer of weights and measures, or his deputies, may have at hand, he or they may adjust and seal them, but if they cannot be readily adjusted he, or they, shall affix to such weights, measures, or balances a notice forbidding their use until he, or they are satisfied they have been so adjusted as to conform with the standard. It shall be unlawful for any person to remove such notice, without the written consent of the officer affixing the same. [As amended Sec. 17, Ch. 146, L. 1939.]

4251. Condemnation or seizure of weights not standard. All weights, measures, and balances which cannot be made to conform to the standard weights and measures as herein provided shall be stamped "condemned" or "C. D." by the state sealer of weights and measures, or his deputies, or the state sealer of weights and measures, or his deputies, may confiscate and seize, without warrant, any incorrect weight, measure, weighing or measuring device or part thereof which does not conform to the state standards or specifications, and which in his or their best judgment cannot be repaired. Scales commonly known as "family scales" or scales marked when sold "not in legal trade" shall not be deemed standard and shall be subject to such seizure. The state sealer of weights and measures, or his deputies, shall not be liable to the owner of the property for damages caused by such seizure. [As amended Sec. 18, Ch. 146, L. 1939.]

4252. Weights may be seized as evidence without warrant. The state sealer of weights and measures, or his deputies, may seize, without warrant, such weights, measures, or balances as may be necessary to be used as evidence in case of violation of any act relative to the sealing of weights and measures. They shall be returned to the owners or forfeited as the court may direct. [As amended Sec. 19, Ch. 146, L. 1939.]

4253. Scales of itinerant peddlers to be adjusted before use and annually. All itinerant peddlers and hawkers, using scales, balances, weights, or measures, shall take the same to the office of the state sealer of weights and measures, or his deputies, before any use is made thereof, and have the same sealed and adjusted at least once a year. [As amended Sec. 20, Ch. 146, L. 1939.]

4254. Regulation of containers of milk and cream. All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles, the standard measure or capacity of which shall be the gallon containing two hundred thirty-one (231) cubic inches, the half gallon containing one-half as much as the gallon, and the quart one-fourth as much as the gallon and the pint one-half as much as the quart. Any purchaser of milk, cream or skimmed milk, having reason to believe that any measure, can, jar, bottle, or other vessel or receptacle, in which milk, cream, or skimmed milk is sold and delivered to him, is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased, may apply to the sealer of weights and measures, or his deputies, who shall test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity, according to such certificate, shall be less than the amount purchased, such purchaser may make complaint to any court having jurisdiction. [As amended Sec. 21, Ch. 146, L. 1939.]

4255. Contents of milk and cream bottles to be indicated thereon—penalty for violation. No person or corporation shall, after the passage of this act, sell or offer for sale within the state of Montana, any milk or cream in bottles or glass jars, unless each of said bottles or glass jars in which said milk or cream is sold or offered for sale shall have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, the capacity thereof, and the state sealer of weights and measures, or his deputies, shall have the right, at any time, to examine any such bottle or glass jar, in order to ascertain whether such bottle or jar is of a capacity not less than that which it purports to be; and if any such bottle or jar is of less capacity than that which it purports to be, or of any such bottle or jar shall not have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, its capacity as aforesaid, the person or corporation selling or offering for sale milk or cream in any such bottle or jar, or having in his possession any such bottle or jar, to be used or which has been used for the purpose of containing milk or cream to be sold or offered for sale in said state of Montana shall be deemed guilty of a misdemeanor. [As amended Sec. 22, Ch. 146, L. 1939.]

4256. Penalty for using false weights. A person who uses, or has in his possession for use in trade, any weight, measure, scale, balance, steel-yard, or weighing device, which is false or incorrect, shall be guilty of a misdemeanor, and any contract made by any person based upon such false or incorrect devices shall be void and such devices shall be liable to be forfeited by any court having jurisdiction. [As amended Sec. 23, Ch. 146, L. 1939.]

4257. Weights stamped by state sealer to be legal weights. A weight or measure duly stamped by the state sealer of weights and measures, or his deputies, or by the national bureau of standards, shall be a legal weight or measure throughout the state, unless found to be false or incorrect, and shall not be liable to be resealed because used in any other place than that in which it was originally stamped. [As amended Sec. 24, Ch. 146, L. 1939.]

4258. Penalty for selling less quantity than represented. Whoever sells or offers for sale a less quantity than represented, or sells in a manner contrary to law, shall be guilty of a misdemeanor. [As amended Sec. 25, Ch. 146, L. 1939.]

4260. Penalty for refusing to permit examination by state sealer or deputies. Any person who neglects or refuses to produce for the state sealer of weights and measures, or his deputies, all weights, measures, or balances in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law shall be guilty of a misdemeanor. [As amended Sec. 26, Ch. 146, L. 1939.]

4261. State sealer authorized to promulgate rules. The state sealer of weights and measures is hereby authorized to make such rules and regulations for the guidance and direction of his deputies in conformity with this act as may be proper and necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations when adopted by the state sealer of weights and measures shall have the same force and effect as is provided for in this act. [As amended Sec. 27, Ch. 146, L. 1939.]

4263. Sealers ex-officio deputy sheriffs—powers. The state sealer of weights and measures and his deputies shall be, by virtue of their respective offices, deputy sheriffs, and as such shall have power to arrest and detain any person violating the provisions of this act, without warrant. [As amended Sec. 28, Ch. 146, L. 1939.]

4264. Disposition of fines. All fines collected for violation of the provisions of this act shall be paid to the state treasurer for support and maintenance of the department of weights and measures. All justices of the peace and clerks of district courts who may collect any fine imposed for the violation of the provisions of this act must, not later than the fifth of each month, transmit to the state sealer of weights and measures all moneys so collected, after deducting therefrom all costs in each case, and the state sealer of weights and measures shall pay the same to the state treasurer, taking his receipt therefor. [As amended Sec. 29, Ch. 146, L. 1939.]

4264.1. Penalty for violation of act. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and where no other penalty is herein provided, upon conviction shall be fined not more than five hundred (\$500.00) dollars. [En. Sec. 30, Ch. 146, L. 1939.]

CHAPTER 331, REGULATION OF SALE OF APPLES

4265.1. Grades of apples. The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade", "fancy or second grade", "C", "combination grades", and "XFFC".

(a) "Extra fancy or first grade", shall consist of apples of one variety which are mature, hand picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russetting, drought spot, hail marks, visible water-core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade.

(b) "Fancy or second grade" shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from

visible water-core, broken skin, and from damage caused by bruises, limbrub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury.

(c) "C" grade shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russeting, drought spot, hail marks, apple scab, diseases and insect injury, and must have fifteen per centum (15%) of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade.

(d) Cull apples shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of extra fancy or first grade, fancy or second grade, or of "C" grade and shall be marked in block letters not less than one inch in height on both ends of box "culls".

(e) "Combination grades". When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade". When "fancy or second grade" and "C" grades are packed together, the boxes must be marked "combination fancy or second grade and, "C". Combination grades must contain at least twenty-five per centum (25%) of apples which belong to the higher grade in the combination.

(f) "XFFC" grade shall consist of "extra fancy or first grade", "fancy or second grade" and "C" grade apples packed in combination. Boxes so marked must contain at least twenty per centum (20%) of apples of "extra fancy or first grade"; fifty (50%) per centum of "fancy or second grade"; and not more than thirty per centum (30%) of "C" grade. No apples failing to meet the requirements of "C" grade shall be permitted in this grade.

(g) No apples smaller than two and one-fourth ($2\frac{1}{4}$) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(h) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed. [As amended Sec. 1, Ch. 89, L. 1939.]

CHAPTER 334-A, PROTECTION OF COPYRIGHTED MUSICAL COMPOSITIONS

4285.1. Definitions. As used in this act, "person" means any individual, resident or non-resident, of this state, and every domestic or foreign or alien partnership, society, association or corporation. The words "performing rights" as used in this act refer to "public performance for profit." [En. Sec. 1, Ch. 123, L. 1939.]

4285.2. Sale of copyrighted works—filing of descriptive list—affidavit. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, or contract to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical com-

position which has been copyrighted under the laws of the United States, and which is the subject of an existing copyright, or to collect any compensation on account of any such sale, license or other disposition, unless such person:

(a) Shall first have filed with the secretary of state a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this act.

(b) Shall simultaneously file an affidavit that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such compositions; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal. [En. Sec. 2, Ch. 123, L. 1939.]

4285.3. Lists may be examined. The list provided for in section 4285.2 shall be made available by the secretary of state to all persons for examination, and taking of copies, in order that any user of such compositions in this state may be fully advised concerning the performing rights therein, and avoid being over-reached by false claims of ownership of said performing rights, and also avoid committing innocent infringements of said works. The secretary of state may, if in his discretion he deems it necessary, in order to prevent such over-reaching and to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, cause all such copyrighted material filed with him to be published once a year or oftener in a form and medium which he shall deem suitable for said purpose. [En. Sec. 3, Ch. 123, L. 1939.]

4285.4. Charge for use of composition not to be based on program where not used. It shall be unlawful for any person selling, licensing the use of, or in any manner whatsoever disposing of, or contracting to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition, to make any charge, or to contract for or collect, any compensation, as a condition of using said performing rights, based in whole or in part, on any program not containing any such composition; and any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in which such composition is rendered. [En. Sec. 4, Ch. 123, L. 1939.]

4285.5. Service of process on secretary of state to be authorized. At the time of filing the information required in section 4285.2, the owner of said performing rights shall likewise execute and deliver to the secretary of state, on a form to be furnished by the secretary of state, an authorization empowering the secretary of state to accept service of process on such person

in any action or proceeding, whether cognizable at law or in equity, arising under this act, and designating the address of such person until the same shall be changed by a new form similarly filed; and service of process may thereafter be effected in this state on such person in any such action or proceeding by serving the secretary of state with duplicate copies of such process; and immediately upon receipt thereof the secretary of state shall mail one of the duplicate copies by registered mail to the address of such person as stated on the authorization last filed by him. [En. Sec. 5, Ch. 123, L. 1939.]

4285.6. Filing fee. Any person filing with the secretary of state such list shall at the time of filing the same, pay a filing fee in the amount of two cents for each composition described in said list. [En. Sec. 6, Ch. 123, L. 1939.]

4285.7. Compliance with act condition precedent to court action. No person shall be entitled to commence or maintain any action or proceeding in any court with respect to such performing rights, or to collect any compensation on account of any sale, license or other disposition of such performing rights, in this state, except upon pleading and proving compliance with the provisions of this act. [En. Sec. 7, Ch. 123, L. 1939.]

4285.8. When unauthorized use of copyrighted work unlawful. It shall be unlawful for any person, without the consent of the owner thereof, if said owner shall have complied with the provisions of this act, publicly to perform for profit, in this state, any such composition, or for any person knowingly to participate in the public performance for profit of such composition, or any part thereof. [En. Sec. 8, Ch. 123, L. 1939.]

4285.9. Penalty for violations. Any violation of this act shall constitute a misdemeanor, to be punished as provided elsewhere in the laws of this state. [En. Sec. 9, Ch. 123, L. 1939.]

CHAPTER 335-A, FAIR TRADE ACT

4292.1. Definitions of terms. The following terms, as used in this act, are hereby defined as follows:

- (a) "Commodity" means any subject of commerce.
- (b) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.
- (c) "Wholesaler" means any person selling a commodity other than a producer or retailer.
- (d) "Retailer" means any person selling a commodity to consumers for use.
- (e) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. [En. Sec. 1, Ch. 42, L. 1937.]

4292.2. Provisions of contracts relating to sale of commodities. No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the state of Montana by reason of any of the following provisions which may be contained in such contract:

(a). That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(b). That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c). That the seller will not sell such commodity:

1. To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will, in turn, agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

2. To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. [En. Sec. 2, Ch. 42, L. 1937.]

4292.3. Violations of minimum resale price provisions enumerated. For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this act (except to the extent authorized by the said contract):

(a). The offering or giving of any article of value in connection with the sale of such commodity;

(b). The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c). The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by section 4292.6 shall be available. [En. Sec. 3, Ch. 42, L. 1937.]

4292.4. Who may establish minimum prices. No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this act, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or by a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name used in connection with such commodity or by a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name. [En. Sec. 4, Ch. 42, L. 1937.]

4292.5. Minimum resale prices not applicable, when. No contract containing any of the provisions enumerated in section 4292.2 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(a). In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(b). When the trade-mark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement or sale thereof;

(c). When the goods are altered, second-hand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(d). By any officer acting under an order of court. [En. Sec. 5, Ch. 42, L. 1937.]

4292.6. Unfair competition—violation of minimum resale price agreement. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the stipulated price in any contract entered into pursuant to the provisions of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. [En. Sec. 6, Ch. 42, L. 1937.]

4292.7. Application of act. This act shall not apply to any contract or agreement between or among producers or distributors or between or among wholesalers or between or among retailers as to sale or resale prices. [En. Sec. 7, Ch. 42, L. 1937.]

4292.8. Citation of act. This act may be known and cited as the "fair trade act". [En. Sec. 10, Ch. 42, L. 1937.]

CHAPTER 340, CREATION OF NEW COUNTIES BY PETITION AND ELECTION

4393. Petition for creation of new county—attached affidavits—notice and hearing.

References

Swaim v. Redeen, 101 M 521, 530, 55 P 2d 1.

CHAPTER 341-A, ABANDONMENT AND ABOLISHMENT OF COUNTIES—ATTACHING ABANDONED TERRITORY TO ADJOINING COUNTIES—PROCEDURE

4426.1. Abandonment of counties. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries attached to and made a part of some adjoining county in the manner provided by this act. [En. Sec. 1, Ch 105, L. 1937.]

4426.2. Petition for election. A petition may be filed with the county clerk of a county, asking that the question of abandoning and abolishing the organization and corporate existence of such county and attaching its territory to and making the same a part of some adjoining county, be submitted to the qualified electors of such county at an election. Such petition shall state the name of the adjoining county to which the territory of such county, so to be abandoned and abolished, shall be attached and made a part; such petition shall be signed by not less than thirty-five per centum (35%) of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post office address and voting precinct of each person signing the same, and shall state the name and address of three persons to whom notice of the insufficiency of the petition shall be sent in the event that the petition shall not have the required number of signatures of qualified electors signed thereto. It shall be the duty of the county clerk, within thirty days after the filing of such petition to examine the

same, to ascertain and determine from the registration records of the county whether such petition is signed by the required number of qualified electors. Such clerk may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining such petition and such board shall provide for their compensation. When such examination is completed said clerk shall forthwith attach to such petition his certificate, properly dated and signed, showing the result of his examination, and if said certificate shows that said petition is signed by the required number of qualified electors, said clerk shall immediately present said petition to the board of county commissioners, if such board be then in session, otherwise at its first regular meeting after the date of such certificate. No person, after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom. [En. Sec. 2, Ch. 105, L. 1937.]

4426.3. Action on petition—notice—separate petition for attachment of portions to be abandoned. Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the county clerk attached thereto, showing that said petition has been signed by not less than thirty-five per centum (35%) of the qualified electors of such county whose names appear upon the registration records of said county, as provided in section 4426.3, said board of county commissioners shall immediately upon presentation of such petition, make and enter an order in its minutes fixing a day for considering and taking final action on said petition, which shall be not less than thirty (30) nor more than thirty-five (35) days after the date when said order is made, and shall cause a notice to be published in the official newspaper of the county to the effect that such petition has been presented to such board asking for the abandonment and abolishment of the county and that said board will meet at the time specified in said order for considering and taking final action on said petition, at which time any and all registered electors of the county interested therein may appear and be heard thereon. Such notice shall be published once a week for two (2) successive weeks immediately following the making of such order.

At any time prior to five (5) days before the date fixed for consideration and final action on such petition fifty per centum (50%) of the registered electors residing within a particular part or portion of such county, may file with the county clerk of such county a petition in writing signed by them praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county, which petition shall definitely, particularly and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished. Whenever any such petition is filed the county clerk shall immediately examine the same and determine from the registration records of the county whether such petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in said petition and the number thereof whose names appear on said petition, and shall deliver such petition with such certificate attached, to the board of county commissioners when such board meets to con-

sider and take final action on such petition for abandonment, separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that the territory embraced within the boundaries described therein may be attached to and become parts of the same, or different adjoining counties, other than the county named and designated in the petition for abandonment, if said county is abandoned. No person after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom. [En. Sec. 3, Ch. 105, L. 1937.]

4426.4. Consideration of petitions—form of resolution relating to abandonment. On the day fixed by the board for consideration and final action on such petition for abandonment the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties, other than the county named in such petition for abandonment, and shall determine the sufficiency of each such petition filed, and shall enter its findings with regard thereto in its minutes, and said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes, and which shall be in substantially the following form:

WHEREAS, there has been filed with the clerk of (name) county, Montana, a petition asking that the organization and corporate existence of said county be abandoned and abolished and its territory attached to and made a part of an adjoining county, to-wit, the county of (name), Montana;

AND WHEREAS, said petition has been presented to the board of county commissioners of (name) county, with a certificate of the clerk of said county attached thereto showing that said petition has been signed by not less than thirty-five per centum (35%) of the registered electors of said county;

(If any petition for attaching any part or portion of the county, in case of abandonment to an adjoining county or counties, other than the county named in the petition for abandonment, and found to have been signed by the required number of registered electors, insert the following for each petition.)

AND WHEREAS, there has been filed a petition signed by not less than fifty per centum (50%) of the registered electors residing within that part or portion of said county described as (give description as contained in petition) praying that the part or portion of said county within such boundaries be attached to and made a part of the county of (name of county given in petition) if said county be abandoned;

NOW THEREFORE BE IT RESOLVED, that if said (name) county shall be abandoned and abolished the territory embraced within its boundaries shall be attached to and become part of the following. (If all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment.)

AND BE IT FURTHER RESOLVED, that the county clerk of (name) county, Montana, make copies of this resolution, each with a copy of said petition for abandonment, with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties, other than the county named in the petition for abandonment,

if any were filed and found sufficient, with signatures omitted) and certify to the same and affix the seal of the county thereto, and transmit one of said copies to the governor of the state of Montana, and one of said copies to the clerk of each county to which any part of said county is to be attached, if abandoned.

Said resolution must be signed by the members of the board of county commissioners and the county clerk must, within five (5) days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of the state of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached, if abandoned. [En. Sec. 4, Ch. 105, L. 1937.]

4426.5. Calling of election—governor's proclamation. Upon receipt of a certified copy of the resolution provided for in section 4426.4, the governor shall, within ten days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in said resolution was filed, and in each county designated in such resolution as a county to which any of the territory of such county, if abandoned and abolished, shall be attached and made a part, at which election there shall be submitted to the qualified electors of the county in which such petition was filed the question of whether or not such county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for such purpose in said petition, and at which election there shall be submitted to the qualified electors of each county named and designated in such resolution as a county to which a part of the territory of the county, proposed to be abandoned and abolished, shall be attached and made a part, if such county shall be so abandoned and abolished, the question of whether or not such part of the territory of such county, if abandoned and abolished, described in such resolution, shall be attached to and become a part of such county. Such proclamation shall fix a day for holding such election in such counties, which shall be not less than ninety days nor more than one hundred and twenty days after the date of the date of the governor's proclamation calling the same; provided that if a general election will be held in said counties within one hundred and twenty days after the date of such proclamation, the governor, in such proclamation, shall direct that such question be submitted to the qualified electors of said counties at such general election. Such proclamation shall be filed in the office of the secretary of state and copies thereof shall be transmitted by the governor to the county clerk of each of the counties in which such election is to be held. [En. Sec. 5, Ch. 105, L. 1937.]

4426.6. Election notices and proclamations—close of registration. The county clerk of each of such counties after receiving a copy of such election proclamation shall present the same to the board of county commissioners, if such board is then in session, and if not in session, then at the first meeting thereof held after such clerk has received the same, and the board of county commissioners of each of such counties shall issue such proclamations and give such notices of election as are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election and which proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and to be attached to and made a part of such county, if said

county be abandoned, and the county clerk of each of such counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state. [En. Sec. 6, Ch. 105, L. 1937.]

4426.7. Forms of ballots—conduct of election. At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ For the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name)

☐ Against the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

And the question to be submitted to the qualified electors of the counties, designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished, is to be attached and made a part, shall be as follows:

☐ For attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ Against attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

Said election shall be held, voted, counted and returns made and canvassed in the manner provided by the general election laws of this state. [En. Sec. 7, Ch. 105, L. 1937.]

4426.8. Canvass of returns—proclamation of result by governor. The board of county commissioners of each county, acting as a canvassing board, must within ten (10) days after the holding of such election canvass the returns of such election, and within five (5) days thereafter the clerk of each such county must make and enter in the records of said board a statement of the vote in such county and transmit to the secretary of state, by registered mail, an abstract thereof, which shall be marked "election returns". Within ten (10) days after receiving such abstracts from all counties in which such election was held, and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute and determine the vote, and the secretary of state, as secretary of such board must make and file in his office a statement thereof and transmit a copy thereof to the governor. Upon receipt of such copy the governor shall issue a proclamation declaring the result of such election and shall file a copy of such proclamation in the office of the secretary of state and transmit a copy of such proclamation to the county clerk of each of the counties in which such election was held, and each such county clerk shall file the same in his office and present the same to the board of county commissioners of his county, if such board is then in session, otherwise at the first meeting of the board after the same has been received by such clerk. [En. Sec. 8, Ch. 105, L. 1937.]

4426.9. Abandonment—termination of offices—result of partly adverse vote. If, at such election a majority of the votes cast in the county in which such petition was filed shall be cast in favor of the abandonment and abolishment of such county, and a majority of the votes cast in the county, designated in the petition for abandonment as the county to which the territory of the abandoned county shall be attached, shall be in favor thereof, then the organization and political and corporate existence of the county in which such petition for abandonment was filed shall cease and terminate and said county shall be abandoned and abolished and disincorporated and cease to exist and its territory shall be attached to and become a part of the counties designated in the resolution adopted under section 4426.4, and the term of office of each of the officers thereof, and of the members of the board of county commissioners thereof, and of its senator and representative in the legislative assembly shall cease and terminate at twelve (12:00) o'clock midnight on the thirtieth day of June immediately following; provided that if at any such election a majority of the votes cast in any adjoining county named in the resolution adopted under section 4426.4, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, shall be against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of such territory described in said resolution shall be attached and become a part of the county designated in such resolution for abandonment as the county to which the territory of the abandoned county shall attach. [En. Sec. 9, Ch. 105, L. 1937.]

4426.10. Effect on townships and township officers. The townships of a county abandoned and abolished under this act shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county and the justices of the peace and constables in such townships shall continue to hold such offices for the terms for which they were elected; provided that if a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county, and the terms of office of the justices of the peace and constables within such divided township shall cease and terminate at twelve (12:00) o'clock midnight of the thirtieth day of June immediately following. [En. Sec. 10, Ch. 105, L. 1937.]

4426.11. County property—effect of abandonment. Each county to which any part of the territory of an abandoned county is attached and made a part shall succeed to, have, possess and own all real estate, and all improvements thereon, and all tangible property and all county highways situated within the territory of the abandoned county attached to such county, and all certificates of tax sale to lands and improvements thereon situated within such territory, and shall have the same right and power to sell and assign such certificates and to apply for and obtain tax deeds to such lands and improvements, and to sell and dispose of the same as were or would have been possessed by the abandoned county if it had not been abandoned. [En. Sec. 11, Ch. 105, L. 1937.]

4426.12. Ownership of other county property. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county shall be attached, subject to the provisions of this act, shall succeed to, have, possess and own all other property, assets, liens, right, remedies and claims of every kind owned and belonging to or possessed by the abandoned county on the date when the same ceases to exist, and shall have the right to demand, collect and receive any and all moneys to which such abandoned county was entitled for taxes for which tax sales had not been held, licenses and other demands remaining unpaid on the date when such abandoned county ceased to exist and to enforce in any manner authorized by law any and all of such rights, remedies and claims. [En. Sec. 12, Ch. 105, L. 1937.]

4426.13. Removal and transcription of records. All maps, plats, papers, documents, records, record books, indexes and files of every kind and description belonging to an abandoned and abolished county, or in the possession of any of the officers thereof, on the date when such county ceases to exist, shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached, and the same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof, and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes and files of such county, and the cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

If any part of an abandoned county shall be attached to and become a part of any adjoining county, other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners of the county designated in said petition for abandonment, to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county, and to prepare complete and proper indexes for such transcribed records, and when completed to transmit such transcribed records and indexes to such other county; provided, that if portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties; provided that chattel mortgages, mechanic and other liens, and other instruments filed, but not recorded, shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of sections 4412, 4413 and 4414, Revised Codes, 1935, shall apply to such transcribed records. [En. Sec. 13, Ch. 105, L. 1937.]

4426.14. Contracts, effect of abandonment on—printing. All valid and existing contracts entered into by a county abandoned and abolished under this act, and which, by the terms thereof, will extend beyond the time when such county ceases to exist, shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part: provided that if the abandoned and abolished county shall have theretofore entered into a printing contract in accordance with the provisions of sections 4482 to 4482.2, inclusive, Revised Codes, 1935, or acts amendatory or supplemental thereto, and such contract shall be in full force and effect on the date when such county ceases to exist, all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part shall be, by the board of county commissioners of such county divided between such contract and any similar existing contract entered into by the board of county commissioners of such county in such manner as such board of county commissioners shall deem equitable and just to the holders of both such contracts until the contract entered into by the abandoned and abolished county shall have expired; provided further, that when a petition has been filed with the county clerk of a county for the abandonment and abolishment of such county, in accordance with the provisions of section 4426.2, the board of county commissioners of such county shall not thereafter enter into any contract under the provisions of said sections 4482 to 4482.2 or amendatory or supplemental acts, until the time has expired when such petition may be presented to such board by the county clerk as provided in section 4426.2. [En. Sec. 14, Ch. 105, L. 1937.]

4426.15. Claims and demands—disposal of, on abandonment. All claims and demands for salaries, services, wages, materials, supplies and for all other current expenses and for claims and demands accruing under contracts, against any abandoned and abolished county, and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist, shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part and all such claims and demands shall be acted on by the board of county commissioners of such county and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county; provided that all such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county; and provided further, that no such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred. [En. Sec. 15, Ch. 105, L. 1937.]

4426.16. Funds—taxes—warrants—tax levies—bonds and bond funds. All moneys in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which

its territory is to be attached and becomes a part and shall be by such treasurer kept and maintained in separate funds in the name of such abandoned and abolished county, and used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist, and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of sections 4426.13 and 4426.15, and the interest on such warrants; provided that moneys in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county. Taxes levied for all such funds which were delinquent on the days when such county ceased to exist, and for which tax sales had not been held and all licenses and other moneys owing to such county at such time shall be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and becomes a part and placed in and deposited to the credit of the funds of such abandoned and abolished county to which the same properly belong. When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such county in which there is not sufficient money to pay the warrants issued and outstanding against the same with interest thereon, and if, after payment of all warrants issued against all such funds and balances remain in any thereof the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

(a) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of sections 4426.13 and 4426.15, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part, that the money in the several funds of such abandoned and abolished county, together with all moneys which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses and other sources, owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of county commissioners of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist, and said board shall thereafter, and at the time of making and fixing tax levies for county purposes, make and fix a levy against all taxable property within such special warrant district for the payment of said warrants and the interest thereon, and the proceeds of such levy, when collected, shall be deposited by the county treasurer in a separate fund which shall be used for the payment of said warrants and interest and for no other purpose; provided that said tax levy need not be made at such a rate as will pay all of said warrants, with interest, in one year, but if said board of county commissioners shall deem it for the best interests of the taxpayers owning property within

such special warrant district, such levy may be spread over a term of not more than three years.

(b) If it shall appear to the satisfaction of the board of county commissioners that a tax levy sufficient to pay such warrants and interest when spread over a term of three years will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist. The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of such district and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district. After such district has been created and established the board of trustees shall direct the county treasurer to use and apply all moneys in the several funds of the abandoned and abolished county, except moneys in any bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the interest thereon, and said board of trustees shall thereupon issue and sell bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon, and the proceeds derived from the sale of such bonds shall be used for such purpose and no other. Such bonds shall not be issued for a longer period than ten (10) years, and shall be issued without submitting the question of doing so to any election. There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same are issued and that said bonds do not incur, create or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district. Such bonds shall be issued in the name of such district, shall be signed by the trustees, the clerk shall attest the same and affix the seal of the district thereof and they shall be registered in the office of the county treasurer who shall certify such registration on such bonds. Except as otherwise provided herein, and in so far as the same are not in conflict herewith, all of the provisions of chapter 356 Revised Codes 1935, and amendatory acts shall apply to, govern and control the issuance, sale and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes. All taxes levied for the payment of the principal and interest of such bonds and all taxes levied by the abandoned and abolished county for all of its funds, except, bond sinking and interest funds, and delinquent at the time such county ceased to exist, and all moneys owing to such abandoned and abolished county from all other sources, shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds, and for no other purpose.

(c) If any abandoned and abolished county shall have outstanding and unpaid any bonds at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist, shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of chapter 356 Revised Codes 1935, and amendatory acts, applicable thereto, shall apply to, govern and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

Any and all moneys in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund, and all taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, and all taxes levied for such sinking and interest fund in accordance with the provisions of this section, and all other moneys coming to the hands of such county treasurer for the use or benefit of such abandoned county when not required for any other purposes under the provisions of this act, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

Whenever any levy is made under the provisions of subdivision (a), (b) or (c) of this section the county clerk of the county in which the board of county commissioners make such levy shall immediately certify such levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached, and the county clerk of each such other county shall compute and extend the taxes against the property within the portion of the abandoned county which has been attached to his county and the treasurer of such county shall collect the same at the same time and in the same manner that other taxes are collected by said county treasurer, and each such treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all such taxes paid to and collected by him, and then in his hands as county treasurer, to the treasurer of the county in which the board of county commissioners made such tax levy. [En. Sec. 16, Ch. 105, L. 1937.]

4426.17. Disposal of fund balances and moneys accruing. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds under the provisions of sections 4426.13 and 4426.15, have been fully paid with the interest thereon, any balance remains in such funds, such balance, with any and all moneys thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of subdivision (b) of section 4426.16, and if there be no such fund then to

the credit of any bond sinking and interest fund under subdivision (c) of section 4426.16; and after all warrants issued and drawn against any of such funds with the interest thereon, all district funding bonds issued under the provisions of subdivision (b) of section 4426.16 and all bonds referred to in subdivision (c) of section 4426.16, have been fully paid, then any balance remaining in any of such funds and all moneys accruing to any or all of such funds thereafter from any and all sources, shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part as its board of county commissioners may direct. [En. Sec. 17, Ch. 105, L. 1937.]

4426.18. Liability for county debt—special warrant districts—special funding bond districts and bonds. Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county, under the provisions of this act, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist at the time such territory is attached to and made a part of such adjoining county.

(a) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county, on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all moneys in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds, and if such moneys are not sufficient to pay all of such warrants, with the interest thereon, then the board of county commissioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county, but shall not include therein any of the territory of such abandoned and abolished county, and shall thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county; provided that the board of county commissioners, may, in its discretion extend such tax levy over a period of not to exceed three years.

(b) If it shall appear to the board of county commissioners that it will require too large a tax levy to pay such warrant indebtedness with interest thereon within three years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county, but shall not include therein any of the territory of the abandoned and abolished county attached to such adjoining county. Such board of county commissioners may, after all moneys in the several funds of said county applicable thereto, have been applied in payment of such outstanding warrants and interest thereon, and without submitting the question of doing so to an election, may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon. Such bonds shall be issued in the name of said adjoining county, and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such aban-

doned and abolished county was attached thereto, and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein said bonds shall be issued and sold, tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by sections 4630.1 to 4630.33 of the Revised Codes of Montana, 1935, and all the provisions thereof, so far as applicable thereto, shall apply to such bonds.

(c) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds, at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county, and none of the property situated within the territory of the abandoned county shall be subjected to any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the territory of the abandoned and abolished county was attached to and made a part thereof. [En. Sec. 18, Ch. 105, L. 1937.]

4426.19. Assessment of property. The county assessor of a county abandoned and abolished under the provisions of this act shall, within ten (10) days after it comes to exist deliver to the county assessor of each county to which any part of its territory had been attached and become a part of all assessment lists, reports, documents and instruments relating to, concerning, or in any way affecting the assessment during the then current assessment year of all taxable property within such portion of such abandoned and abolished county, and it shall be the duty of the assessor of the county, to whom such assessment lists, reports, documents and instruments have been delivered by the assessor of the abandoned and abolished county, to complete all assessments and to fully assess, during the then current assessment year, all taxable property situated or located, on the first Monday of March of such year, within the boundaries of such part of such abandoned and abolished county, and each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would, or could have had, possessed, exercised or performed if such county had not been abandoned and abolished. The county assessor of such abandoned and abolished county shall, until twelve (12:00) o'clock midnight of the thirtieth day of June when said county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory so to be abandoned and abolished will be attached and made a part, in the listing and assessing of all taxable property situated or located within each of such counties to the end that all taxable property within the boundaries of such abandoned county will be fully assessed and taxed. [En. Sec. 19, Ch. 105, L. 1937.]

4426.20. Use and disposal of property of abandoned county. Each county to which any part of an abandoned and abolished county is attached and made a part and becoming the owner under the provisions of this act of the real and any tangible personal property of an abandoned and abolished county may use all of such property for county purposes, or may lease any of such real estate or sell any of such real estate or personal property provided that no such personal property having a value in excess of one hun-

dred dollars (\$100.00) shall be sold unless the same has been appraised within one year immediately prior to the date of sale by three taxpayers, residing within the territory embraced within the boundaries of the abandoned and abolished county, appointed by the judge of the district court to which the county succeeding to the ownership of such property is attached, on petition of the board of county commissioners thereof, and no sale of any such personal property shall be made except at public sale after notice or for a price less than ninety per centum (90%) of such appraised value; provided further, that no such real property shall be leased unless the board of county commissioners shall present to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease, and the same shall be approved by such judge, which approval shall be endorsed on such petition and filed in the office of the clerk of said county; and provided further that no real estate shall be sold by said board of county commissioners unless the same has been appraised within one year immediately prior to the date of sale by three taxpayers residing within the territory embraced within the boundaries of the abandoned and abolished county, appointed by the judge of the district court to which the county is attached, on petition of the board of county commissioners of such county, and every such sale of real estate shall be made at public sale and notice of such sale shall be published once a week for at least two weeks immediately prior to the date for holding the same, in the official newspaper of the county, and no such real estate shall be sold for a price less than ninety per centum (90%) of the appraised value thereof.

The full purchase price of any real estate so sold shall not be required to be made in one payment but the purchaser thereof may pay the same in four installments, the first of which shall be not less than twenty-five per centum (25%) of the purchase price to be paid at the time of purchase, the remainder to be paid in three equal annual installments with interest thereon at not less than five per centum (5%) per annum. All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest, at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid when such real estate shall be assessed at its full cash value, and any and all improvements placed on any such real estate, after its purchase, shall be subject to assessment and taxation at the full cash value thereof. Whenever the purchase price of any real estate is to be paid in installments the board of county commissioners shall enter into a contract with the purchaser thereof and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property or real estate the chairman of the board of county commissioners shall execute and deliver the proper bill of sale or deed to the purchaser, or his successor in interest.

The compensation of all appraisers appointed under the provisions of this section shall be fixed by the district judge appointing the same. Moneys received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such counties to the treasurer of the county desig-

nated in such petition for abandonment. All moneys received from the sales of personal property and from the leasing or sales of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows: If there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county such moneys shall be applied in payment of such warrants and interest; if there are no such warrants outstanding but district bonds have been issued under the provisions of subdivision (b) of section 4426.14 then such moneys shall be deposited in the sinking and interest fund for such district bonds; if there be no such district bonds outstanding then such moneys shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist, and if there be no such bonds outstanding and unpaid, then such moneys shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the assessed valuation of the property in each such part on the first day of January immediately preceding the abandonment bears to the assessed valuation of all the property in such abandoned county and deposited in such funds of such county as the boards of county commissioners of such counties may direct. [En. Sec. 20, Ch. 105, L. 1937.]

4426.21. Intent of act as to debt. It is intended by the provisions of this act that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of or paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all moneys in all funds of an abandoned and abolished county at the time it ceases to exist and all moneys thereafter received by such funds from the payment of taxes delinquent, unpaid licenses and from all other sources, owing to such county at the time it ceased to exist, and all moneys received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county, and such county to which any part of its territory is attached and made a part shall receive only such balance of any such moneys as may remain after all of the such indebtedness and cost is fully paid. [En. Sec. 21, Ch. 105, L. 1937.]

4426.22. School and special districts. All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part, and the members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire; provided that if any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation, in addition to their numbers, as will distinguish them from the districts in the county to which such territory is attached and made a part; and provided further

that if the territory of any school district shall be divided and parts attached to two or more counties such school district shall be a joint school district of such counties.

All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part, and shall be accounted for by said county treasurer as the funds of such districts, provided that if a joint school district is created the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county, remaining unpaid at the time said county ceased to exist, and all other moneys which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds. [En. Sec. 22, Ch. 105, L. 1937.]

4426.23. Effect on county high school in abandoned county. If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist such county high school shall become the high school of the district in which it is situated or located, and all property, both real and personal owned by such county or acquired for and used in connection with the maintenance and operation of such county high school, shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school, and all lawful existing contracts of such county high school shall be assumed by and become the contracts of such school districts. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

All moneys in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the school district succeeding to the property of the county high school is attached and made a part, and used and applied as follows:

Any moneys in any bond sinking and interest funds shall be used for the payment and interest on any unpaid and outstanding high school bonds; if there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all moneys in such county high school funds, except sinking and interest funds, shall be used for the payment of such warrants, with interest thereon; if there be no such high school warrants outstanding then the moneys in such funds shall be transferred to the high school fund of the school district which, under the provisions of this act is to maintain such high school as a district high school, and if such moneys are insufficient to pay all outstanding warrants with the interest thereon then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished county ceases to exist, when collected, shall be deposited to the credit of such fund; and all taxes levied for high school purposes and remaining

unpaid when such county ceases to exist, and all other moneys which would have gone to such high school if the county had not been abandoned and abolished, when collected shall be deposited to the proper high school funds of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part. [En. Sec. 23, Ch. 105, L. 1937.]

CHAPTER 343, GENERAL POWERS AND LIMITATIONS UPON COUNTIES

4444. Enumeration of powers.

Quaere: Is a county, while engaged in the repair of highways, acting in its governmental capacity and, therefore, immune

from liability for the tortious acts of its servants? *Johnson v. City of Billings et al.*, 101 M 462, 472, 54 P 2d 579.

CHAPTER 344, COUNTY COMMISSIONERS—ORGANIZATION, MEETINGS, AND COMPENSATION

4464. Compensation of members of board. Each member of the board of county commissioners is entitled to eight dollars per day for each day's attendance on the sessions of the board, and seven cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed. [As amended Sec. 1, Ch. 176, L. 1939.]

Construing Chapter 82, Laws of 1937 (section 325.1 to 325.9), The Public Welfare Act, on application for writ of mandate to compel the State Board of Public Welfare to pay the per diem and mileage of county commissioners while acting as ex-officio members of the County Welfare Board, held, that there is nothing in the Act to indicate that the state board must pay such expenses, but that under subdi-

vision (b) of section IX of Part I of the Act, declaring that the county board of public welfare shall receive the same compensation for their services as they receive as county commissioners the extra compensation is payable by the county in the absence of some provision making it payable from some other source. *State ex rel. Broadwater County v. Poetter*, 107 M 284, 288, 84 P 2d 796.

CHAPTER 345, GENERAL POWERS OF BOARDS OF COUNTY COMMISSIONERS

4465. Powers of supervision.

Held, that a board of county commissioners may under its implied powers as the governing body of the county, properly authorize the installation and maintenance of a tract index in the office of the county clerk for the purpose of securing reliable

information with relation to lands sold for taxes and facilitating the matter of making application for tax deeds. *Ransom v. Pingel, et al.*, 104 M 119, 122, 65 P 2d 616.

4465.21. Representing and management of county property and business.

References

State v. Board of County Commrs. 106 M 251, 258, 76 P 2d 648.

4465.27. Lease of county property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law; to lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise pro-

vided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed three (3) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of sections 2208.1 and 2235 of the Revised Codes of the state of Montana, A. D. 1935 and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect. [As amended Sec. 1, Ch. 152, L. 1937.]

4465.30. Commissioners may designate and equip places for stock inspection. The board of county commissioners may designate within their respective counties certain convenient places and provide suitable facilities at said places for unloading and loading of livestock for inspection purposes. [En. Sec. 1, Ch. 74, L. 1939.]

4466. Validation of sales made under section 4465.9. All sales heretofore made of real property owned in fee simple by any county in this state, by the board of county commissioners of any county, the validity of which may be in doubt or involved by reason of the failure of the board of county commissioners to comply with the provisions of section 4465.9, are hereby legalized and declared to be valid and binding sales, and all deeds or conveyances heretofore executed by any board of county commissioners, or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such property so sold, are hereby legalized and declared to be valid, and vesting the title of the property so conveyed in the purchaser named in such conveyance in fee simple. [As amended Sec. 1, Ch. 45, L. 1937.]

CHAPTER 346, SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

4482-4482.4. [Repealed Sec. 24, Ch. 118, L. 1937.]

4482. Contracts for county printing—duty of county commissioners—rates and prices—bond of printer—terms of contract.

Held, that section 4605.1, Revised Codes, requiring boards of county commissioners to advertise for bids for the purchase of automobiles, trucks, road machinery, "or supplies of any kind", and letting contracts in excess of \$1,000, "to the lowest and best responsible bidder", has no application to the letting of contracts for county printing, that subject being specifically covered by sections 4482 et seq.

State v. Board of County Commrs., 106 M 251, 255 et seq., 76 P 2d 648.

Id. Held, that under section 4482, Revised Codes, boards of county commissioners are not required to call for bids to do the county printing or to award the contract to the lowest bidder.

Id. A newspaper "of general circulation" within the meaning of section 4482, Revised Codes, requiring boards of county

commissioners to contract with such a paper to do county printing, is not determined by the number of its subscribers but by the diversity of the subscribers; if it

contains news of a general character and interest to the community, although the news may be limited in amount, it qualifies as one of general circulation.

4482.5. Contracts for county printing—price limit. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general bona fide and paid circulation with second class mailing privilege, printed and published within the county, and having been printed and published continuously in such county at least twelve months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank books, election supplies, loose leaf forms, official publications, and all other printed forms required for the use of such counties at not more than the prices specified in sections 4482.6 to 4482.21, inclusive. [En. Sec. 1, Ch. 118, L. 1937.]

4482.6. Official publications and legal advertising. For every folio or fraction thereof, not more than one dollar and fifty cents shall be paid for the first insertion thereof, and not more than fifty cents per folio for each subsequent insertion thereof, required by law to be made. For rule and figure work, not more than two dollars per folio or fraction thereof, for the first insertion, and not more than fifty cents per folio for each subsequent insertion thereof, required by law to be made.

That for the purpose of establishing a basis of folio measurement, one standard newspaper column, when set in the following mentioned type size, shall constitute a folio: 12 lines of solid six point, or approximately one hundred words; fourteen lines of solid seven point, or approximately one hundred words; fifteen lines of solid eight point, or approximately one hundred words; seventeen lines of solid nine point, or approximately one hundred words; seventeen lines of solid ten point, or approximately one hundred words.

For the purpose of determining the different sizes of type hereinbefore mentioned, the following point system measurements as universally used by the graphic arts industries shall prevail: Computing seventy-two points to a linear column inch, there shall be twelve lines of solid six point; 10.285 lines of solid seven point; nine lines of solid eight point; eight lines of solid nine point; 7.2 lines of solid ten point to each column inch.

For rule and figure work the basis for determination of this style shall be not less than two justifications. [En. Sec. 2, Ch. 118, L. 1937.]

4482.7. Envelopes.

			Addl.
	500	1000	1000
6¾ bond	\$3.50	\$5.75	\$4.50
10 bond	4.25	7.25	5.50
6¾ white wove, 24 Sub.	3.00	5.00	4.00
10 white wove, 28 Sub.	3.75	6.50	5.50
6¾ manila, 20 Sub.	2.50	4.00	3.00
10 manila, 28 Sub.	3.00	5.00	4.00
12 manila, 28 Sub.	4.00	6.25	5.75

[En. Sec. 3, Ch. 118, L. 1937.]

4482.8. Letterheads.

	250	500	1000	Addl. 1000
Size 7x8½ on 16 or 20 pound substance, white or colored paper.				
Grade 17	\$4.00	\$5.25	\$7.00	\$3.00
Grade 27	4.25	5.75	8.00	3.75
Size 8½x11 on 16 or 20 pound substance, white or colored paper.				
Grade 17	4.50	5.75	8.00	3.75
Grade 27	5.00	6.50	9.50	5.00

[En. Sec. 4, Ch. 118, L. 1937.]

4482.9. Legal blanks.

	250	500	1000	Addl. 1000
⅛ sheet, 3½x8½, printed one side	\$ 3.75	\$ 4.25	\$ 6.50	\$ 5.00
⅛ sheet, 3½x8½, printed two sides	5.50	6.50	9.50	6.00
¼ sheet, 7x8½, printed one side	4.75	5.75	8.50	6.00
¼ sheet, 7x8½, printed two sides	7.50	8.50	11.50	8.00
½ sheet, 8½x14, printed one side	8.75	10.25	14.00	8.50
½ sheet, 8½x14, printed two sides	12.00	13.50	20.00	10.00
Full sheet, 8½x28, printed one side	13.25	15.25	24.00	14.00
Full sheet, 8½x28, printed two sides	21.75	23.75	31.50	15.00
Full sheet, 17x14, printed one side	18.00	20.00	26.00	14.50
Full sheet, 17x14, printed two sides	28.00	30.00	38.00	15.00

The above prices are based on blank or marginal ruled stock, padded or loose. [En. Sec. 5, Ch. 118, L. 1937.]

4482.10. General office forms, original only. Printed one or two sides, padded or loose. Actual cost of paper per ream pound indicates the grade number listed herewith. Grade numbers cover either 13, 16 or 20 pound substance paper.

	250	500	1000	Addl. 1000
Size 4⅓x8½.				
1 side, grade 12	\$ 5.40	\$ 6.40	\$ 7.60	\$ 2.75
1 side, grade 17	5.50	6.55	7.90	3.00
1 side, grade 27	5.65	6.85	8.55	3.25
Same form other side add .....	.75	1.25	2.25	2.00
Different form other side add	2.25	2.75	3.50	2.00
Size 5½x8½				
1 side, grade 12	7.75	8.75	10.25	2.75
1 side, grade 17	7.75	8.75	10.50	3.25
1 side, grade 27	8.00	9.25	11.50	3.75
Different other side add	3.75	4.25	5.00	1.90
Size 6x9½—7¼x8½				
1 side, grade 12	8.00	9.00	10.50	2.75
1 side, grade 17	8.00	9.25	11.00	3.00
1 side, grade 27	8.25	9.75	12.00	3.75
Different other side add	4.00	4.50	5.00	2.00
Size 8½x11				
1 side, grade 12	15.65	16.90	19.05	4.00
1 side, grade 17	15.90	17.40	19.25	4.55

	250	500	1000	Addl. 1000
1 side, grade 27	16.40	18.15	21.25	5.80
Different other side add	9.00	9.75	10.50	1.50
Size 8½x14 or 9½x12				
1 side, grade 12	17.75	19.25	21.50	4.00
1 side, grade 17	18.00	19.50	22.25	4.75
1 side, grade 27	18.50	20.75	24.50	7.00
Different other side add	10.25	11.00	12.00	2.00
Size 11¼x14				
1 side, grade 12	20.75	22.25	24.75	4.50
1 side, grade 17	21.00	22.75	26.00	5.50
1 side, grade 27	21.50	24.00	28.25	7.50
Different other side add	12.25	12.75	13.75	2.00
Size 12x19				
1 side, grade 12	24.75	26.50	29.50	5.25
1 side, grade 17	25.25	27.25	31.00	6.75
1 side, grade 27	26.00	29.00	34.25	10.00
Different other side add	15.50	16.25	17.25	2.50
[En. Sec. 6, Ch. 118, L. 1937.]				

4482.11. General forms, receipts and requisitions in duplicate or more copies. Actual cost of paper per pound for both original and duplicate copies is indicated by the grade numbers listed herewith. Grade numbers cover either 13, 16 or 20 substance paper, perforated, gathered, numbered and padded.

Sizes 3½x8½ or less	250	500	1000	Addl. 1000
1 side only				
Original and duplicate,				
Grade 30	\$ 5.90	\$ 7.20	\$ 9.55	\$ 4.15
Grade 35	5.90	7.30	9.65	4.25
Grade 40	6.00	7.40	9.95	4.50
Triplicate or more, and for each additional blank,				
Grade 20	1.25	1.75	2.50	2.00
Bound 50 sets to book in tag or marble-board cover	1.00	1.65	2.90	2.65
If original printed both sides add	3.25	3.75	4.50	1.50
If original and duplicate printed both sides add	3.75	4.50	6.00	3.00
Sizes over 3½x8½, but not over 5½x8½, 1 side only				
Original and duplicate,				
Grade 30	8.00	9.75	13.00	5.50
Grade 35	8.00	9.75	13.25	5.75
Grade 40	8.25	10.00	13.50	6.00
For each additional blank add, grade 20	1.50	2.50	4.00	2.75
Bound 50 sets to book in tag or marble-board cover	1.00	1.65	2.90	2.65

	250	500	1000	Addl. 1000
If original printed both sides add	5.75	6.25	7.00	1.50
If original and duplicate printed both sides add	6.25	7.00	7.50	1.50
Sizes over $5\frac{1}{2} \times 8\frac{1}{2}$ but not over $8\frac{1}{2} \times 11$ 1 side only				
Original and duplicate,				
Grade 30	12.25	15.00	19.25	7.75
Grade 35	12.50	15.25	19.75	8.25
Grade 40	12.50	15.50	20.25	8.75
For each additional blank add, grade 20	1.50	2.75	5.00	4.00
Bound 50 sets to book in tag or marble- board cover	1.20	2.20	3.55	3.30
If original printed both sides add	9.00	9.75	10.50	1.50
Original and duplicate printed both sides	9.75	10.50	11.75	2.50
Sizes over $8\frac{1}{2} \times 11$ but not over $8\frac{1}{2} \times 14$ or $9\frac{1}{2} \times 12$ 1 side only				
Original and duplicate,				
Grade 30	14.00	17.00	22.00	8.75
Grade 35	14.25	17.50	22.75	9.50
Grade 40	14.25	17.75	23.75	10.00
For each additional blank add, grade 20	1.75	3.25	5.75	4.50
Bound 50 sets to book in tag or marble- board cover	1.20	2.20	3.55	3.30
Original printed both sides	10.25	11.00	12.00	2.00
Original and duplicate printed both sides	11.00	12.00	14.00	2.75
Sizes over $8\frac{1}{2} \times 14$ but not over 11×17 1 side only				
Original and duplicate,				
Grade 30	18.00	21.25	27.50	10.75
Grade 35	18.25	21.75	28.50	11.75
Grade 40	18.50	22.25	29.50	12.75
For each additional blank add, grade 20	2.50	4.25	7.25	5.75
Bound 50 sets to book in tag or marble- board cover	1.70	3.00	4.75	4.55
Original printed both sides	13.50	14.25	15.25	2.00
Original and duplicate printed both sides	14.25	15.25	17.00	3.25
Sizes over 11×17 but not over 12×19 or 14×17 , 1 side only				
Original and duplicate,				
Grade 30	20.00	23.75	30.75	12.75
Grade 35	20.25	24.25	32.00	13.50
Grade 40	20.75	25.00	33.25	14.75
For each additional blank add, grade 20	2.75	4.75	8.50	6.75
Bound 50 sets to book in tag or marble- board cover	1.70	3.00	4.75	4.55

	250	500	1000	Addl. 1000
Original printed both sides	15.00	16.25	17.25	2.00
Original and duplicate printed both sides	16.25	17.25	19.00	3.25
[En. Sec. 7, Ch. 118, L. 1937.]				

4482.12. Real estate tax receipts in quintuple. Perforated, gathered, numbered, different color paper for each sheet, bound in books of 50 sets each complete.

	1000	2000	3000	Addl. 1000	
Size 8½x11	\$64.40	\$106.50	\$146.00	\$41.40	
If additional sheet add	4.75	8.50	12.00	3.50	
Add for extra color	4.75	6.25	7.50	1.25	
If statement printed on other side add	5.50	6.50	7.50	1.25	
Size 9¼x11⅞ or 8½x14	73.65	120.25	166.50	46.25	
If additional sheet add	5.25	9.50	13.75	4.25	
Add for extra color	5.00	6.50	8.00	1.50	
If statement printed on other side add	6.25	8.25	10.25	2.00	
Size 10¾x16¾ or 11x17	94.25	152.20	208.80	56.60	
If additional receipt add	6.75	12.00	17.25	5.25	
Add for extra color	6.50	8.50	10.25	2.00	
If statement printed on back add	8.25	10.00	11.75	2.00	
	500	1000	2000	3000	Addl. 1000
Delinquent tax receipts in triplicate, perforated, numbered, gathered, bound in books of 50 sets each complete	\$22.90	\$31.90	\$47.75	\$63.50	\$14.50
Motor vehicle license re- ceipt in triplicate, per- forated, numbered, gath- ered, bound in 50 sets to book complete	16.90	25.70	34.25	7.65	
Motor vehicle delinquent tax receipt in quadruple. Perforated, gathered, numbered and bound in books of 50 sets complete	26.15	40.00	53.75	12.25	
Personal tax receipts in quadruple, gathered, num- bered, perforated, bound in books of 50 sets com- plete, one or two color ink	27.15	42.25	56.50	13.50	
[En. Sec. 8, Ch. 118, L. 1937.]					

4482.13. Assessment lists.

	1000	2000	3000	Addl. 1000
Size 8½x14 in duplicate, gathered, padded, perforated	\$53.75	\$75.50	\$97.00	\$20.77
If original only, padded	40.00	46.75	53.50	6.75
Bound in books of 50 or 75 sets add ..	4.50	6.90	9.30	2.40
Size 8¾x15 to 9½x16½ or 9½x17 in duplicate	61.25	86.00	110.25	22.63
If original only, padded	46.25	53.75	61.00	8.25
If bound in books of 50 or 75 sets add ..	5.75	9.35	12.95	3.60
Size 14x17 in duplicate	65.50	105.50	134.75	27.90
If bound in books of 50 or 75 sets add ..	6.70	11.00	15.00	4.00
Size 14x17, original only, padded	56.35	64.55	72.95	8.40

[En. Sec. 9, Ch. 118, L. 1937.]

4482.14. Imprinting stamped envelopes and printing post cards. Imprinting corner card on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Addl. 1000
Envelopes	\$2.00	\$3.00	\$5.00	\$7.00	\$2.00
Post cards, 1 side printed	2.75	3.50	5.00	6.50	1.50
Both sides printed	5.25	6.75	9.75	12.75	3.00

[En. Sec. 10, Ch. 118, L. 1937.]

4482.15. Index cards. White or color, 3x5. Punching included. Printed.

	500	1000	2000	Addl. 1000
One side	\$ 6.50	\$ 8.25	\$11.50	\$ 3.00
Different form other side	11.25	13.50	17.50	4.00
Same form both sides	7.75	10.25	15.00	4.00
4x6 or 3½x5½. One side	7.75	9.75	13.25	3.50
Different form other side	13.25	15.75	20.25	5.00
Same form both sides	9.00	11.75	16.75	5.00
5x8. One side	9.75	12.75	18.00	5.00
Different form other side	16.75	20.75	27.50	7.00
Same form both sides	11.00	14.75	21.50	7.00

[En. Sec. 11, Ch. 118, L. 1937.]

4482.16. Special ruled and printed forms. Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or ruled and printed one side only. Prices include punching for loose leaf holder with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add \$1.50 for each guide line.

8½x11 Total of 8 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

	250	500	1000	Addl. 1000
Grade 25, 28 Sub.	\$16.50	\$19.50	\$25.50	\$11.25
Grade 25, 32 Sub.	17.00	24.25	27.25	12.25

				Addl.
	250	500	1000	1000
Grade 50, 36 Sub.	19.50	24.00	34.50	18.25
Deduct if both sides alike	5.00	4.75	4.50	.25
Deduct if printed and ruled 1 side only	6.75	7.50	9.00	3.00
8½x14 Total of 10 Unit Columns, Both Sides				
Extra Unit Columns 50 Cents Each				
Grade 25, 28 Sub.	\$19.75	\$23.50	\$30.50	\$12.75
Grade 25, 32 Sub.	20.00	24.00	32.05	13.75
Grade 50, 36 Sub.	23.00	29.00	40.75	21.25
Deduct if both sides ruled and printed				
alike	7.00	6.75	6.50	.25
Deduct if ruled and printed 1 side only	8.25	9.00	10.50	3.00
9½x12 Total of 8 Unit Columns, Both Sides				
Extra Unit Columns 50 Cents Each				
Grade 25, 28 Sub.	\$17.75	\$21.75	\$28.50	\$12.50
Grade 25, 32 Sub.	18.25	22.75	30.50	14.50
Grade 50, 36 Sub.	20.50	27.00	39.00	21.00
Deduct if both sides ruled and print-				
ed alike	5.25	5.00	4.75	.25
Deduct if ruled and printed 1 side only	7.00	7.75	9.25	2.50
9½x24 Total of 16 Unit Columns, Both Sides				
Extra Unit Columns 50 Cents Each				
Grade 25, 28 Sub.	\$35.50	\$41.25	\$52.50	\$21.00
Grade 25, 32 Sub.	36.00	42.25	54.50	23.00
Grade 50, 36 Sub.	41.00	51.75	72.50	37.50
Deduct if both sides ruled and print-				
ed alike	11.50	11.25	11.00	.50
Deduct if ruled and printed 1 side only	14.00	16.00	19.00	4.00
10½x16 Total of 12 Unit Columns, Both Sides				
Extra Unit Columns 50 Cents Each				
Grade 25, 28 Sub.	\$23.00	\$28.50	\$38.25	\$17.00
Grade 25, 32 Sub.	23.25	29.25	39.50	18.25
Grade 50, 36 Sub.	27.25	37.00	54.00	32.00
Deduct if both sides ruled and print-				
ed alike	8.50	8.25	8.00	.50
Deduct if ruled and printed 1 side only	10.75	12.50	15.50	4.00
11x14 Total of 10 Unit Columns, Both Sides				
Extra Unit Columns 50 Cents Each				
Grade 25, 28 Sub.	\$21.50	\$25.75	\$33.75	\$14.75
Grade 25, 32 Sub.	22.00	26.50	35.00	16.00
Grade 50, 36 Sub.	25.25	32.75	47.50	21.75
Deduct if both sides ruled and print-				
ed alike	7.00	6.75	6.50	.25
Deduct if ruled and printed 1 side only	8.25	9.00	10.50	2.50
11x17 Total of 12 Unit Columns, Both Sides				
Extra Unit Columns 50 Cents Each				
Grade 25, 28 Sub.	\$25.50	\$31.25	\$41.50	\$17.75
Grade 25, 32 Sub.	26.00	32.25	43.00	19.25

	250	500	1000	Addl. 1000
Grade 50, 36 Sub.	30.00	40.00	59.00	27.50
Deduct if both sides ruled and print- ed alike	9.50	9.25	9.00	.50
Deduct if ruled and printed 1 side only	11.75	13.50	16.50	4.00

12x9½ Total of 8 Unit Columns, Both Sides

Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$16.75	\$20.50	\$27.50	\$12.50
Grade 25, 32 Sub.	17.00	21.00	28.50	13.50
Grade 50, 36 Sub.	20.50	27.50	37.00	20.75
Deduct if both sides ruled and print- ed alike	5.00	4.75	4.50	.25
Deduct if ruled and printed 1 side only	7.00	7.75	9.25	2.50

12x19 Total of 14 Unit Columns, Both Sides

Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$28.50	\$34.75	\$46.50	\$20.00
Grade 25, 32 Sub.	29.00	35.75	48.50	22.00
Grade 50, 36 Sub.	34.00	45.50	67.50	39.00
Deduct if both sides ruled and print- ed alike	11.00	10.75	10.50	.25
Deduct if ruled and printed 1 side only	13.25	15.00	18.00	4.00

12x23 Total of 16 Unit Columns, Both Sides

Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$36.75	\$43.00	\$56.00	\$18.50
Grade 25, 32 Sub.	37.25	44.00	58.25	20.75
Grade 50, 36 Sub.	43.00	55.00	80.00	43.50
Deduct if both sides ruled and print- ed alike	12.00	11.75	11.50	.50
Deduct if ruled and printed 1 side only	14.50	16.50	19.50	4.00

12x28 Total of 18 Unit Columns, Both Sides

Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$49.50	\$61.00	\$81.50	\$36.25
Grade 25, 32 Sub.	50.75	63.00	85.50	40.25
Grade 50, 36 Sub.	62.00	83.00	124.00	70.75
Deduct if both sides ruled and print- ed alike	15.20	15.00	14.50	.50
Deduct if ruled and printed 1 side only	18.50	20.00	23.50	5.00

14x17 Total of 12 Unit Columns, Both Sides

Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$28.75	\$34.50	\$45.75	\$20.50
Grade 25, 32 Sub.	29.50	35.50	47.75	22.50
Grade 50, 36 Sub.	32.50	45.50	66.00	38.75
Deduct if both sides ruled and print- ed alike	10.00	9.75	9.50	.50
Deduct if ruled and printed 1 side only	11.50	12.50	14.50	3.50

14x22 Total of 14 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

	250	500	1000	Addl.
Grade 25, 28 Sub.	\$40.00	\$48.25	\$63.50	\$27.00
Grade 25, 32 Sub.	40.75	49.50	66.00	29.50
Grade 50, 36 Sub.	48.00	62.50	91.00	49.75
Deduct if both sides ruled and print- ed alike	13.50	13.00	12.50	.50
Deduct if ruled and printed 1 side only	16.00	17.50	20.00	4.75

14x34 Total of 20 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$59.50	\$71.00	\$92.00	\$37.75
Grade 25, 32 Sub.	60.75	73.00	96.00	41.75
Grade 50, 36 Sub.	72.00	85.00	130.50	77.25
Deduct if both sides ruled and print- ed alike	19.50	19.00	18.00	1.25
Deduct if ruled and printed 1 side only	22.50	24.25	27.25	5.50

17x11 Total of 8 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$19.00	\$24.25	\$33.50	\$17.25
Grade 25, 32 Sub.	19.50	25.25	35.00	18.75
Grade 50, 36 Sub.	23.50	32.75	51.00	41.00
Deduct if both sides ruled and print- ed alike	5.50	5.25	5.00	.25
Deduct if ruled and printed 1 side only	6.50	7.50	9.50	3.50

17x14 Total of 10 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$24.75	\$30.50	\$41.75	\$20.00
Grade 25, 32 Sub.	25.25	31.50	43.75	22.00
Grade 50, 36 Sub.	31.00	41.50	65.00	35.25
Deduct if both sides ruled and print- ed alike	9.50	9.25	9.00	.25
Deduct if ruled and printed 1 side only	10.50	11.50	13.50	3.50

17x22 Total of 14 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$42.50	\$51.50	\$68.50	\$29.50
Grade 25, 32 Sub.	43.30	53.00	71.50	32.50
Grade 50, 36 Sub.	51.25	69.00	103.00	59.75
Deduct if both sides ruled and print- ed alike	15.00	14.50	14.00	.50
Deduct if ruled and printed 1 side only	15.50	16.75	19.00	4.50

17x28 Total of 18 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$51.50	\$63.00	\$83.50	\$37.25
Grade 25, 32 Sub.	52.75	65.00	87.50	41.25
Grade 50, 36 Sub.	54.00	75.00	126.00	70.75
Deduct if both sides ruled and print- ed alike	17.50	17.00	16.50	.50
Deduct if ruled and printed 1 side only	21.00	22.75	26.00	6.00

17x46 Total of 28 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

	250	500	1000	Addl. 1000
Grade 25, 28 Sub.	\$84.00	\$101.75	\$133.50	\$57.25
Grade 25, 32 Sub.	86.00	104.75	140.00	63.75
Grade 50, 36 Sub.	84.50	117.25	201.00	100.50
Deduct if both sides ruled and print- ed alike	29.50	28.75	28.00	.75
Deduct if ruled and printed 1 side only	35.50	38.00	42.50	8.50

18x11½ Total of 8 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$23.50	\$29.00	\$39.50	\$18.25
Grade 25, 32 Sub.	24.00	30.00	41.25	21.25
Grade 50, 36 Sub.	28.50	38.75	58.00	33.00
Deduct if both sides ruled and print- ed alike	9.00	8.75	8.50	.25
Deduct if ruled and printed 1 side only	10.00	10.75	13.00	3.50

18x23 Total of 16 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$46.25	\$57.00	\$76.50	\$33.00
Grade 25, 32 Sub.	47.00	58.00	79.50	36.00
Grade 50, 36 Sub.	56.50	75.00	113.25	57.50
Deduct if ruled and printed both sides alike	16.50	16.00	15.50	.50
Deduct if ruled and printed 1 side only	18.50	20.50	23.50	5.25

18x46 Total of 32 Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$91.75	\$113.00	\$150.50	\$62.50
Grade 25, 32 Sub.	93.00	114.00	156.00	65.50
Grade 50, 36 Sub.	112.50	147.50	223.75	106.50
Deduct if both sides ruled and print- ed alike	31.50	30.50	29.50	1.00
Deduct if ruled and printed 1 side only	35.50	40.00	44.50	8.75

19x12 Total of 8 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$25.00	\$30.75	\$42.00	\$20.25
Grade 25, 32 Sub.	25.50	31.75	44.00	22.25
Grade 50, 36 Sub.	30.50	41.25	62.00	36.75
Deduct if both sides ruled and print- ed alike	9.25	9.00	8.75	.25
Deduct if ruled and printed 1 side only	10.25	11.00	13.25	3.50

19x24 Total of 16 Unit Columns, Both Sides
Extra Unit Columns 50 Cents Each

Grade 25, 28 Sub.	\$49.50	\$61.50	\$81.75	\$36.25
Grade 25, 32 Sub.	50.25	63.00	84.75	39.25
Grade 50, 36 Sub.	61.00	81.75	122.25	64.00

	250	500	1000	Addl. 1000
Deduct if both sides ruled and printed alike	17.50	17.00	16.50	.50
Deduct if ruled and printed 1 side only	20.50	22.50	25.50	5.25

[En. Sec. 12, Ch. 118, L. 1937.]

4482.17. Bound books. Bound books, ruled, printed and paged on 36 sub. No. 1 100% rag ledger. Patent back, flat opening. Complete, including lettering back or side title. The first dimension listed is the binding margin. When greater or intermediate lengths of sheets are furnished with a binding size as listed, the difference between two given lengths is added or subtracted in the correct proportion to either of the given lengths to cover the length of sheet actually furnished. When an intermediate binding size is furnished, the next larger binding size shall be used.

Size 10½x16—7 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$27.55	\$29.30	\$31.30	\$32.95	\$34.05
¾ Russia, printed page	30.95	32.70	34.65	36.35	37.65
Full Russia, printed head	31.85	34.25	36.90	39.10	40.80
Full Russia, printed page	35.20	37.65	40.30	42.50	44.15

Add for extra unit columns 50c each.

Add for folio printed head \$5.50.

Add for folio printed page \$11.25.

Add for each printed guide line \$1.00.

Add for A to Z index \$2.50.

Size 11½x18—8 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$32.80	\$34.75	\$36.90	\$38.50	\$40.25
¾ Russia, printed page	40.00	41.95	44.10	45.70	47.45
Full Russia, printed head 37.10		39.70	42.50	44.60	46.75
Full Russia, printed page 44.30		46.90	49.70	51.80	53.95

Add for extra unit columns 50c each.

Add for folio printed head \$6.50.

Add for folio printed page \$13.00.

Add for each printed guide line \$1.00.

Add for A to Z index \$3.50.

Size 12x19—8 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$35.65	\$37.85	\$40.30	\$41.65	\$43.75
¾ Russia, printed page	42.40	44.60	47.05	48.45	50.50
Full Russia printed head 41.05		43.95	47.00	49.15	51.55
Full Russia, printed page 47.80		50.70	53.80	56.10	58.40

Add for extra unit columns 50c each.

Add for folio printed head \$7.00.

Add for folio printed page \$13.75.

Add for each printed guide line \$1.00.

Add for A to Z index \$3.50.

Size 14x8½—5 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$20.15	\$22.50	\$24.10	\$25.15	\$26.30
¾ Russia, printed page	26.10	27.45	29.05	29.10	31.25
Full Russia, printed head	24.10	25.90	27.90	29.35	20.80
Full Russia, printed page	29.05	30.85	32.85	34.30	35.75
Add for extra unit columns 50c each.					
Add for folio printed head \$3.00.					
Add for folio printed page \$8.00.					
Add for each printed guide line \$1.00.					
Add for A to Z index \$2.50.					

Size 14x17—7 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia printed head	\$36.25	\$38.70	\$41.65	\$42.80	\$45.60
¾ Russia printed page	44.35	46.81	49.75	52.95	53.70
Full Russia printed head	40.95	44.10	47.70	50.40	52.55
Full Russia printed page	49.05	61.20	55.80	58.50	60.65
Add for extra unit columns 50c each.					
Add for folio printed head \$6.50.					
Add for folio printed page \$13.75.					
Add for each printed guide line \$1.25.					
Add for A to Z index \$3.50.					

Size 14x20—8 Unit columns to page

No. pages	300	400	500	560	640
¾ Russia printed head	\$45.90	\$50.55	\$54.70	\$57.85	\$60.30
¾ Russia printed page	48.45	53.10	57.75	60.15	63.90
Full Russia printed head	48.80	54.55	57.70	59.85	62.30
Full Russia printed page	53.60	57.30	61.45	64.60	67.05
Add for extra unit columns 50c each.					
Add for folio printed head \$7.50.					
Add for folio printed page \$16.50.					
Add for each printed guide line \$1.25.					
Add for A to Z index \$4.00.					

Size 16x10½—5 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia printed head	\$25.30	\$27.30	\$29.70	\$31.35	\$32.90
¾ Russia printed page	32.05	34.05	36.45	38.10	39.90
Full Russia printed head	32.95	35.60	38.70	40.85	43.05
Full Russia printed page	36.35	38.90	42.10	44.20	46.35
Add for extra unit columns 50c each.					
Add for folio printed head \$4.00.					
Add for folio printed page \$10.25.					
Add for each printed guide line \$1.25.					
Add for each A to Z index \$3.50.					

Size 16x21—8 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia printed head	\$44.60	\$48.05	\$52.05	\$54.90	\$57.50
¾ Russia printed page	53.10	56.60	60.55	63.50	66.05

	300	400	500	560	640
Full Russia printed head	50.40	54.60	59.20	62.45	65.85
Full Russia printed page	59.00	63.15	67.75	71.00	74.40
Add for extra unit columns 50c each.					
Add for folio printed head \$8.00.					
Add for folio printed page \$18.00.					
Add for each printed guide line \$1.25.					
Add for A to Z index \$4.00.					

Size 17x14—7 Unit Columns to Page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia printed head	\$32.85	\$35.35	\$38.25	\$40.65	\$42.45
$\frac{3}{4}$ Russia printed page	40.95	43.45	46.35	48.75	50.55
Full Russia printed head	38.05	41.20	44.80	47.75	49.90
Full Russia printed page	46.10	49.30	52.90	55.85	57.95
Add for extra unit columns 50c each.					
Add for folio printed head \$5.50.					
Add for folio printed page \$12.75.					
Add for each printed guide line \$1.25.					
Add for A to Z index \$3.50.					

Size 17x28—8 Unit Columns to Page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia printed head	\$52.05	\$56.85	\$62.10	\$65.60	\$69.90
$\frac{3}{4}$ Russia printed page	63.75	69.30	73.80	78.20	81.60
Full Russia printed head	61.95	67.85	74.25	79.50	83.60
Full Russia printed page	73.65	79.55	85.95	90.80	95.10
Add for extra unit columns 50c each.					
Add for folio printed head \$9.50.					
Add for folio printed page \$20.00.					
Add for each printed guide line \$1.25.					
Add for A to Z index \$6.00.					

Size 18x11 $\frac{1}{2}$ —5 Unit Columns to Page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia printed head	\$29.65	\$31.60	\$34.00	\$36.05	\$37.45
$\frac{3}{4}$ Russia printed page	37.75	39.70	42.10	44.15	45.55
Full Russia printed head	33.95	36.55	39.48	42.30	43.55
Full Russia printed page	42.05	44.65	47.70	50.30	52.10
Add for extra unit columns 50c each.					
Add for folio printed head \$5.00.					
Add for folio printed page \$12.00.					
Add for each printed guide line \$1.25.					
Add for A to Z index \$3.50.					

Size 18x23—8 Unit Columns to Page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia printed head	\$49.65	\$54.20	\$59.20	\$63.50	\$66.55
$\frac{3}{4}$ Russia printed page	59.55	64.10	69.30	73.25	76.45
Full Russia printed head	57.95	63.40	69.30	74.15	78.05
Full Russia printed page	67.90	73.30	79.20	84.05	87.95
Add for extra unit columns 50c each.					
Add for folio printed head \$9.00.					

Add for folio printed page \$19.00.
 Add for each printed guide line \$1.25.
 Add for each A to Z index \$5.50.

Size 19x12—5 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia printed head	\$31.60	\$33.80	\$36.45	\$38.70	\$40.20
¾ Russia printed page	39.70	41.90	44.55	46.75	48.30
Full Russia printed head	37.00	39.90	43.20	45.95	48.05
Full Russia printed page	45.10	48.00	51.30	54.05	56.15

Add for extra unit columns 50c each.
 Add for folio printed head \$5.50.
 Add for folio printed page \$12.75.
 Add for each printed guide line \$1.25.
 Add for A to Z index \$3.50.

Size 19x24—8 Unit Columns to Page

No. pages	300	400	500	560	640
¾ Russia printed head	\$52.05	\$57.85	\$62.10	\$66.50	\$69.90
¾ Russia printed page	63.75	68.30	73.80	78.20	81.60
Full Russia printed head	61.95	67.85	74.25	79.10	83.60
Full Russia printed page	73.65	78.80	85.95	90.80	95.30

Add for extra unit columns 50c each.
 Add for folio printed head \$9.50.
 Add for folio printed page \$20.00.
 Add for each printed guide line \$1.25.
 Add for A to Z index \$6.00.
 [En. Sec. 13, Ch. 118, L. 1937.]

4482.18. Size 18x11½ record books only. Bound or loose leaf style with binder.

No. pages	560	640
Marginal record ruled stock form grade 50, 36 sub. full		
Russia stock ruled not printed	\$31.50	\$33.40
Full Russia printed head	39.00	41.25
Full Russia printed page	46.15	48.75

Add for folio printed head \$1.50.
 Add for folio printed page \$12.00.
 Add for A to Z index \$3.50.

Loose leaf record binders only, full Russia, letter with back title 7 or 8 quire capacity, each	\$26.50
Record ruled sheets, No. 1, 50 grade, 36 sub. ledger stock ruled marginal form, per M sheets	\$30.00

[En. Sec. 14, Ch. 118, L. 1937.]

4482.19. County and school warrants.

	250	500	1000	Addl. 1000
Warrants with stub, size 4x14" on grade 27 bond or safety paper, either single or more on a sheet, numbered and bound in cardboard covers	\$ 7.25	\$ 9.25	\$13.00	\$ 7.00

				Adtl.
School warrants in triplicate, size 250	500	1000		1000
4x9 $\frac{3}{8}$, grade 27, 16 sub. on original and grade 12, 16 sub. duplicate and triplicate. Duplicate and triplicate printed in black and red ink; original black only. Original and duplicate perforated. Bound 50 sets to book	\$12.65	\$16.60	\$23.15	\$10.55
		500	1000	Adtl. 1000
County warrants in duplicate or foldover style, three or more on a sheet, perforated, numbered, gathered and punched for loose leaf binder, grade 27 bond or safety paper	\$21.50	\$37.50		\$25.00
For binding warrants in duplicate or foldover style, check binding, 1 book of 1000 warrants				\$2.50
Half binding 1 book of 1000 warrants				\$4.50
[En. Sec. 15, Ch. 118, L. 1937.]				

4482.20. Election supplies and ballots.

Tally books for primary or general election, each		\$ 1.25
Tally books for judicial candidates, primary elections, each .....		.50
Poll books primary or general election, each		1.25
Envelopes for poll books, 10x15 inches, each .....		.25
Envelopes for tally sheets, 10x15 inches, each .....		.25
Envelopes for voted ballots, 15x18 inches, each .....		.45
Envelopes for unused ballots, 15x18 inches, each .....		.45
Envelopes for return of election books, 17x22 inches, each .....		.45
Envelopes for precinct registers, 17x22 inches, each .....		.45
Envelopes for election returns, 9 $\frac{1}{2}$ x4 $\frac{1}{8}$ inches, each .....		.10
Envelopes for absent voter send out or return 6 $\frac{1}{2}$ x9 $\frac{1}{2}$ or 6x9 inches	200	12.00
	Additional 100	3.50
Envelopes for absent voter return ballots to judges of election, 10x15 inches, each		\$.25
Absent voter record sheets, size 11x21, foldover	100	6.50
	Additional 100	4.50
Official seals 6 $\frac{1}{2}$ x5 inches, printed on gummed paper	250	3.50
	500	5.75
Certificates of election, with stub, size 11x17, check bound	50	7.50
	100	11.25
	1000	Adtl. 1000
Precinct register sheets, 8 $\frac{1}{2}$ x14, special ruled and printed, both sides, punched, grade 17, 20 sub. bond paper	\$42.00	\$14.75
Precinct register sheets, 14x17, special ruled and printed, both sides, punched, grade 17, 20 sub. bond paper	60.25	17.75
Covers for precinct register, 8 $\frac{1}{2}$ x14, 125 tagboard, front and back cover printed and punched, per 30 sets		6.50
Each additional 10 sets		1.00

Covers for precinct register, 14x17, 125 tagboard, front and back cover printed and punched, per 30 sets	8.50
Each additional 10 sets	1.30
Instructions to voters, 14x22 on 100 lb. tagboard 100	20.00
Additional 100	5.00
List of electors 7c per name. This price includes printing up to 100 copies of each precinct list on grade 17, 20 lb. bond paper.	

Ballots		Adtl.
	1000	1000
Ballots primary election, complete, including numbering, perforating, assembling, rotating and stitching per party	\$45.00	\$35.00
Ballots for judicial candidates, complete, including numbering, perforating and rotating	15.00	9.00
Ballots, initiative and referendum, constitutional amendment, complete, including perforating	10.00	6.00
Ballots general election, complete, including numbering and perforating	65.00	35.00
Where constitutional amendments, initiative and referendum measures appear on general election ballot	7.00	1.50
[En. Sec. 16, Ch. 118, L. 1937.]		

4482.21. Stock forms without county name.

Budget form C B 2—per 100	\$ 5.25
Budget form C B 3—per 100	5.25
Budget form C B 4—per 100	5.25
Budget form C B 5—per 100	6.75
Budget form C B 6—per 100	6.75
Budget form C B 7—per 100	9.00
Motor vehicle license register sheets, size 11x14, ruled and printed one side, per 100	\$ 3.00
Justice docket, size 320 page, each	18.00
Report of justice fees received, size 14x17, ruled and printed one side, per 100	6.00
Teachers' registers	
A. Monthly register, each .....	.35
B. Six weeks register, each .....	.55
C. Six weeks register, complete with report blanks and envelopes, each .....	.75
District school budget applications, form 1	100 4.00
Additional 100	3.00
High school budget application sheets	100 5.00
Additional 100	4.00
District school budget record sheets, ruled and printed one side, size 13¾x21¾	100 4.50
Additional 100	4.00
School census reports	per 250 5.00
	per 500 9.00
Teachers' contracts	per 50 3.00
	per 100 4.50
Trustees' annual reports	per 50 5.00
	per 100 9.00

Teachers' reports	per 250	6.00
	per 500	9.75
Superintendent's or principal's reports	per 100	4.00
	Additional 100	3.50

[En. Sec. 17, Ch. 118, L. 1937.]

4482.22. "Substance" and "grade number" defined. That for the purpose of defining the meaning of the word "substance", used in connection with paper stock mentioned herein, it is understood that all substance weights are to be computed on the basic size 17x22 inches; conforming to the uniform scale of sizes and weights as used by paper manufacturers. The words "grade number" relate to price per pound of paper in ream lots. [En. Sec. 18, Ch. 118, L. 1937.]

4482.23. Bids, how made—determination of prices not herein specified. Bids may be made either on the entire act, or bids may be made under each section. If each section is bid upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books and printing not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin printing catalog list. [En. Sec. 19, Ch. 118, L. 1937.]

4482.24. Printing contract—bond—term—subletting. The contract shall be let to the newspaper that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient undertaking in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two years. All newspapers which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some newspaper or printing establishment within the state, which shall do the work under the contract so sub-let entirely within the state with Montana labor. [En. Sec. 20, Ch. 118, L. 1937.]

4482.25. Matter included in price. All prices set forth herein include paper stock specified, all printing, and work complete and delivered at the court house. [En. Sec. 21, Ch. 118, L. 1937.]

4482.26. Act not applicable to printing for county fairs and expositions. None of the provisions of this act shall apply to any printing or advertising that may be required in connection with the holding of county fairs and expositions. [En. Sec. 22, Ch. 118, L. 1937.]

4482.27. Penalty for violations. That any violation of this act shall be deemed a misdemeanor and punished as such. [En. Sec. 23, Ch. 118, L. 1937.]

4486.4. Use of county highway equipment in cities and towns. The board of county commissioners of any county may, in their discretion, auth-

orize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand population or less located in such county. [En. Sec. 1, Ch. 157, L. 1939.]

4505.1. Noxious weeds enumerated—nuisance—provision against. Each of the plants mentioned in this section is hereby declared to be a noxious weed and a common nuisance. No person residing in, or owning land within an organized irrigation district, co-partnership, corporation, company, irrigation district, or drainage district owning, occupying or controlling land shall permit any Canadian thistle, quack grass, perennial sow thistle, wild morning glory, perennial milk weed, Russian knap weed and white top to come to bloom thereon. [En. Sec. 2, Ch. 41, L. 1937.]

4506. "Noxious weeds" defined—nuisance. [Repealed Sec. 19, Ch. 195, L. 1939.]

4506.1. Definitions.

(a) noxious weeds. The Canadian thistle (*cirsium arvense* (L.) Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.) white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* waldst. and kit.), Russian knapweed (*centaurea pteris pallas.*), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds."

(b) Noxious weed seed. The seed of any noxious weed is hereby declared a common nuisance. Such noxious weed seed is hereinafter referred to as "seed" or "seeds."

(c) Weed control and weed seed extermination districts. The area included within the boundaries of any organized weed control and weed seed extermination district shall hereinafter be referred to as the "district."

(d) Weed control and weed seed extermination district supervisors. The three persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county shall be referred to as the "supervisors".

(e) The board of county commissioners. The board of county commissioners shall be referred to as the "commissioners". [En. Sec. 1, Ch. 195, L. 1939.]

4506.2. Growth of noxious weeds unlawful. It shall be unlawful to permit any noxious weed, as named in this act, or designated by the board of county commissioners of the respective county, to go to seed on any lands within the area of any district. This section shall apply to all persons, co-partnerships, corporations or companies owning, occupying or controlling lands, easements, or right-of-ways, as well as all county, state and federal owned and controlled highways, and also all drainage and irrigation ditches, spoil banks, barrow pits and right-of-ways for canals and laterals within the district. [En. Sec. 2, Ch. 195, L. 1939.]

4506.3. Quarantine against introduction of noxious weed seed and farm products conveying the same. Whenever the supervisors have reason to

believe that farm products, including seed, which will cause the spread of noxious weeds, are about to be introduced into the county, the said supervisors shall declare an embargo against the importation of such farm products and seeds into such county. [En. Sec. 3, Ch. 195, L. 1939.]

4506.4. Quarantine against introduction of noxious weed seed from other states. Whenever the governor of the state has good reason to believe that shipments of grain, plants, seed, tubers, nursery stock or fruit containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, he shall, by proclamation, declare an embargo against the importation or shipment of any such grain, plants, tubers, nursery stock, seed or fruit into the state except under such restrictions as he, after consulting the commissioner of agriculture, may deem proper. [En. Sec. 4, Ch. 195, L. 1939.]

4506.5. Creation of weed control and weed seed extermination districts. When a petition signed by twenty-five per cent (25%) of the freeholders of any proposed district, outside of any incorporated town or city of the county, is presented to the commissioners of such county, asking for the creation of a weed control and weed seed extermination district, the commissioners shall set a day for a hearing of the same and order notice thereof to be given to all persons interested, as is hereinafter provided. Said petition shall set forth the boundaries of the district and the legal description of each piece of land within the same, together with the record owner thereof. [En. Sec. 5, Ch. 195, L. 1939.]

4506.6. Notice of hearing. Notice of such hearing shall be mailed, by registered letter, to each landowner within the proposed district, at his last known address. The address of the land owner as set forth in the conveyance by which he secured title, provided such conveyance contains his address, shall be deemed his last known address, unless by affidavit it shall appear that the landowner has another address. If no known address appears, service shall be deemed complete upon publication as hereinafter provided for. Such notice shall also be posted in three public places within the district and be published in the newspaper published nearest the district for two weekly issues, and such posting, mailing and first publication shall be at least ten (10) days before the date of hearing. [En. Sec. 6, Ch. 195, L. 1939.]

4506.7. Hearing on petition. At such a hearing, any landowner may file his written objections to the creation of the district. If landowners, owning fifty-one per cent (51%) of the agricultural land within the district, shall file written consent for the creation of the district, the commissioners shall proceed to hear the said petition, and if, in their judgment, the creation of the said district is desirable and for the best interest of all persons interested, they shall, by an order duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the land contained therein. [En. Sec. 7, Ch. 195, L. 1939.]

4506.8. Weed control and weed seed extermination districts within corporate limits of cities and towns. Twenty-five landowners within the incorporated limits of any city or town may present a like petition to the

council of said city or town, and the said city or town council shall have authority to create weed control and weed seed extermination districts within the city or town in like manner as herein provided for in the creation of weed control and weed seed extermination districts within the county. [En. Sec. 8, Ch. 195, L. 1939.]

4506.9. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The commissioners shall have authority to appoint a board of weed control and weed seed extermination supervisors, consisting of three members, who shall be appointed annually for each county in which a city, town, or county weed control and weed seed extermination district is created. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall serve without pay, except such expenses for mileage and per diem as shall be fixed by the commissioners. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within the districts of there county the extermination or control program as promulgated by the commissioners. [En. Sec. 9, Ch. 195, L. 1939.]

4506.10. Inspection of premises—notice to occupant—possession. Where complaint has been made and the supervisors have reason to believe that noxious weeds described in this act are present upon the lands within their jurisdiction, in violation of the law, they shall forthwith inspect the premises, and if such weeds are found, they shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, within a period of time specified in said notice. [En. Sec. 10, Ch. 195, L. 1939.]

4506.11. Destruction of weeds by supervisors if notice not observed—collection of cost. If the notice be not obeyed within the time specified in the notice, the supervisors shall forthwith destroy and exterminate such weeds and make report thereof to the county clerk, with a verified, itemized account of their services, and expenses in so doing, and a description of the lands involved, and shall include in said account the necessary cost and expense of chemicals, man hours of labor and equipment employed, at a rate paid, in the immediate vicinity, for farm labor per day and for equipment used for an eight hour day. Such expenses shall be paid by the county out of the "noxious weed fund", and unless the sum, to be repaid by the owner or occupant, is not repaid before October 15th next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county, as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the state or the county for state or county owned lands. When such taxes are collected, they shall be credited to the "noxious weed fund". In destroying and exterminating such weeds, the supervisors are authorized to take possession and control of any infested tract of land, within their districts, together with any fences or ditches thereon, and to move any fence or ditch where

necessary in order to better conduct the control work and process of extermination as may be necessary. If any fence or ditch be moved, the same shall be replaced upon completion of the extermination work, if requested by the landowner. [En. Sec. 11, Ch. 195, L. 1939.]

4506.12. Destruction of weeds mingled with crop. When noxious weeds are intermixed with a growing crop within the district, so that the field is a menace to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary. The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement, provided, however, that it shall be the duty of the supervisors to confer with the commissioners as a board of arbitration, who, when they deem it proper, may extend for one year the order for destruction of the crop containing the noxious weeds. [En. Sec. 12, Ch. 195, L. 1939.]

4506.13. Creation of noxious weed fund by county commissioners—expenditure thereof. The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated the “noxious weed fund”. This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, and such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such fund may be drawn by the supervisors and countersigned by the commissioners. [En. Sec. 13, Ch. 195, L. 1939.]

4506.14. Furnishing of materials. If any landowner desires to control the weeds and exterminate the weed seed on his own lands, in accordance with the notice of the supervisors, he may make application to the supervisors for the necessary chemicals, equipment and material necessary to enable him to control the weeds and exterminate the weed seed. Upon such application the supervisors shall certify to the commissioners the amount of such chemicals, equipment and material as they deem necessary, and the commissioners shall thereupon cause to be furnished to such landowner such chemicals, equipment and material, and the same shall be charged against the said landowner and his land in the manner hereinafter provided and collected as is provided for in this act. Such chemicals and material shall be paid for out of the “noxious weed fund.” [En. Sec. 14, Ch. 195, L. 1939.]

4506.15. County commissioners to control weeds and to exterminate weed seed on public highways and county owned lands in the district. It shall be the duty of the commissioners to control noxious weeds and exterminate noxious weed seed on the highways and county owned land within the confines of the district. The total cost of such control and extermination shall be paid from the “noxious weed fund”. [En. Sec. 15, Ch. 195, L. 1939.]

4506.16. Commissioners shall determine cost of control and extermination and fix the amount to be paid from the noxious weed fund. The com-

missioners shall determine and fix the cost of the control of noxious weeds and of extermination of noxious weed seed, whether the same be performed by the individual landowners or by the supervisors. In cases where the landowner controls the weeds and exterminates the weed seed, he shall present to the commissioners a duly verified claim for one-third of such cost, and when the same has been approved by the supervisors and commissioners it shall be paid to such landowner out of the "noxious weed fund". When the supervisors do the control and extermination provided for herein, one-third of the cost thereof shall be paid out of the "noxious weed fund", and the remaining two-thirds shall be charged against the land upon which weed control and extermination was had, and such two-thirds shall be repaid or collected in the manner hereinbefore provided for. [En. Sec. 16, Ch. 195, L. 1939.]

4506.17. Cooperation with other programs. The commissioners are empowered to cooperate with any state or federal aid program that becomes available. Under such a plan of cooperation the direction of the program shall be under the direct supervision of the commissioners of the county in which the program operates. Any financial aid received from the federal government in support of noxious weed control and noxious weed seed extermination shall be applied upon the landowner's part of the cost of control and extermination, or in case the landowner has paid his part of the cost, then his portion of such federal aid shall be paid to such landowner. [En. Sec. 17, Ch. 195, L. 1939.]

4506.18. Penalty for violation of act. Any person who in any manner interferes with the weed control commissioners, weed supervisor or his deputies and employees in carrying out the provisions of this act, or refuses to obey an order of the supervisors, shall be guilty of a misdemeanor and upon conviction thereof, he shall be fined not to exceed a sum of one hundred dollars (\$100.00). All fines, bonds and penalties collected under the provisions of this act shall be paid to the county treasurer of each county, and by him placed to the credit of the fund to be known as the "noxious weed fund." [En. Sec. 18, Ch. 195, L. 1939.]

4507-4513.2. [Repealed Sec. 19, Ch. 195, L. 1939.]

CHAPTER 347, CARE OF THE COUNTY POOR

4521. The board of county commissioners vested with control.

Held, that a superintendent of a county poor farm with the exclusive superintendence of which the county commissioners are charged under section 4521, Revised Codes, who was required to work only the customary eight hours a day, and who while using a county truck without permission on a private mission collided with plaintiff's automobile, was merely an employee of the county and not a "public officer." *Gagnon v. Jones et al.*, 103 M 365, 368, 62 P 2d 683.

While repeals of statutes by implication are not favored by the courts, nevertheless,

4534. Poor-farm and workhouse.

References

Gagnon v. Jones et al., 103 M 365, 368, 62 P 2d 683.

where a later Act is in conflict with a prior one on the same subject, the last controls and works an implied repeal; and under that rule held, that some of the provisions of Chapter 82, supra, are in conflict with sections 4521 et seq., Revised Codes, relative to the county poor, among them section 4521, placing the entire and exclusive superintendence of the poor in the board of county commissioners, and that such provisions are impliedly repealed by the Chapter. *State ex rel. Wilson v. Weir et al.*, 106 M 526, 535, 79 P 2d 305.

4536. Burial of deceased soldiers, sailors, marines and nurses. It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged soldier, sailor or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, marine or nurse who shall have served in the army, navy, marine corps or army nurse corps of the United States who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, (1) the expense of burial shall be the sum of one hundred fifty dollars (\$150.00), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death, and provided (2) that the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits hereof.

In the event any honorably discharged soldier, sailor, marine or nurse, who shall have served in the army or navy of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided, and the veterans' burial supervisor may take charge of said burial in the same manner as he would, had such deceased person died within the county of his residence.

Whenever any soldier, sailor, marine, nurse or inmate hereinbefore described shall die at any public institution of the state of Montana, other than the state soldiers' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment. [As amended Sec. 1, Ch. 163, L. 1937; Amd. Sec. 1, Ch. 52, L. 1939.]

CHAPTER 350-A, JOINT COUNTY OR REGIONAL LIBRARIES

4562.4. Joint county or regional libraries may be established. Two (2) or more counties, by action of their boards of county commissioners, may join in establishing and maintaining a joint county or regional library under the terms of a contract to which all will agree. The expenses of the joint county or regional library shall be apportioned between or among the counties concerned on such a basis as shall be agreed upon in the contract. The treasurer of one of the counties, as shall be provided in the contract, shall have the custody of the funds of the joint county or regional library; and the treasurers of the other counties concerned shall transfer quarterly to him all moneys collected for the "free library fund" in their respective counties. If the board of county commissioners of any county decides to withdraw from a joint county or regional library contract, the county shall be entitled to a division of property in the same proportions as expenses were shared. Any library district organized under the provisions hereof, may, by majority

vote of the qualified voters present and voting at a legal meeting of either of the counties which comprise said district, dissolve its cooperative existence. [En. Sec. 1, Ch. 132, L. 1939.]

4532.5. Participation by other libraries. When a joint county or regional library shall have been established, the legislative body of any governmental unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. [En. Sec. 2, Ch. 132, L. 1939.]

4562.6. Trustees—term—vacancies—expenses—removal. In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. [En. Sec. 3, Ch. 132, L. 1939.]

4562.7. Appropriations and taxes for library support—expenditures. After a joint county or regional library shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the library and so far as possible, the taxes levied and collected for this purpose shall be levied and collected within the territory to be served. The board of trustees shall have the exclusive control of expenditures from the fund subject to any examination of accounts required by the state and money shall be paid from the fund only upon vouchers of the board of trustees, without further audit. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated and available for library purposes. [En. Sec. 4, Ch. 132, L. 1939.]

4562.8. Commissioners to levy library taxes. The board of county commissioners of each county that has joined in the establishment of a joint

county or regional library as provided for in this act shall annually levy a tax equivalent to the tax which may be levied for a county library as provided in section 4568, revised codes of Montana, 1935. [En. Sec. 5, Ch. 132, L. 1939.]

4562.9. Qualifications of librarian. The librarian of a joint county or regional library shall have the qualifications required by Montana law for county librarians and shall come under the same minimum salary regulation. [En. Sec. 6, Ch. 132, L. 1939.]

CHAPTER 353, RURAL IMPROVEMENT DISTRICTS

4584. Assessment of property—apportionment of costs—railroads. To defray the cost of making any of the improvements provided for in this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such district to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the board of county commissioners in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for, between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street or abutting upon the side of any corner lot or block, that the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear. Whenever any portion of the surface of a street is kept or used by any person, firm or corporation for railroad or for street railway purposes the cost and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by the person, firm or corporation owning such railroad, and where double tracks of railroads are laid, such person, firm or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs. [As amended Sec. 1, Ch. 53, L. 1939.]

CHAPTER 354, CLAIMS AGAINST COUNTIES—COUNTY WARRANTS

4605.1. Request for bids necessary in making purchases exceeding one thousand dollars.

Held, that section 4605.1, Revised Codes, requiring boards of county commissioners to advertise for bids for the purchase of automobiles, trucks, road machinery, "or supplies of any kind", and letting contracts in excess of \$1,000, "to the lowest

and best responsible bidder", has no application to the letting of contracts for county printing, that subject being specifically covered by sections 4482 et seq. State v. Board of County Comms., 106 M 251, 255 et seq., 76 P 2d 648.

Id. Held, that words "or supplies of any kind", found in section 4605.1, Revised Codes, relating to the duty of the boards of county commissioners to call for bids where the money to be expended exceeds \$1,000, relate to the things immedi-

ately preceding them, i. e., automobiles, trucks or other vehicles, machinery, equipment or materials used in connection with them, and not to the matter of county printing.

CHAPTER 355, COUNTY BUDGET SYSTEM

4613.1. County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.

A writ of mandate directing the county commissioners to pay drainage district assessments which in effect were judgments against the county for benefits to its highways, held improper where the county had no funds with which to make payment and the only feasible way to make payment was through the issuance of emergency warrants authorized by the Budget Law; such warrants could only be issued by the county clerk and the chairman of the board, and hence the writ directed the commissioners to do an act which it was beyond their legal power to do, and was

therefore of no effect. *State v. Board of County Commrs. et al.*, 100 M 581, 588, 51 P 2d 635.

In preparing their budgets and making their tax levies boards of county commissioners must take into consideration the amount of money already available in each fund for which a levy is made. See sections 4613.1, 4613.2 and 4613.4, which declare the policy in this state to be that counties shall levy taxes only as needed. *Rogge v. Petroleum County et al.*, 107 M 36, 45, 80 P 2d 380.

4613.2. Tabulation by clerk of expenditure program—classifications—items included in.

In preparing their budgets and making their tax levies boards of county commissioners must take into consideration the amount of money already available in each fund for which a levy is made. See sec-

tions 4613.1, 4613.2 and 4613.4, which declare the policy in this state to be that counties shall levy taxes only as needed. *Rogge v. Petroleum County et al.*, 107 M 36, 45, 80 P 2d 380.

4613.4. Hearings on budget—adoption—fixing tax levies. On the Wednesday immediately preceding the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 4613.3, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing shall be continued from day to day and shall be concluded and terminated and the budget finally approved and adopted on the second Monday in August and before the fixing of the tax levies by such board.

Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for capital out-

lay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than ten per centum (10%) the amount actually expended for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than ten per centum (10%) the total amount actually expended for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding; provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

The budget as finally determined, in addition to setting out separately each item for which any appropriation or expenditure is authorized and

the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the cash balance in the fund at the close of the last preceding fiscal year, the amount, if any, which it is estimated will accrue to the fund from sources other than taxation, the reserve, if any, for the next ensuing fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as so finally determined and enter the same at length and in detail in the official minutes of the board.

On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at such rate as will raise the amount set out in such budget as the amount necessary to be raised by tax levy for such fund during the current fiscal year, and no more; provided, that the taxable valuation of the county for the then current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on such basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy, and shall be made in the manner provided by section 2148.1, revised codes of Montana, 1935.

The county clerk and recorder shall, not later than the fifteenth day of September following, forward a full, complete, itemized and detailed copy of the final budget, together with the tax levies made therefor, to the state examiner. If any county clerk and recorder shall fail, refuse, or neglect to forward such copy of the budget to the state examiner within such time, the state examiner shall, before the first day of October immediately following, notify the board of county commissioners of such county that such copy of budget has not been forwarded to him by the county clerk and recorder, and such board of county commissioners must thereupon withhold from said county clerk and recorder his salary for the month of September until such time as such county clerk and recorder shall file with such board a receipt from the state examiner showing the receipt by him of such copy. [As amended Sec. 1, Ch. 98, L. 1937.]

In preparing their budgets and making their tax levies boards of county commissioners must take into consideration the amount of money already available in each fund for which a levy is made. See sections 4613.1, 4613.2 and 4613.4, which declare the policy in this state to be that counties shall levy taxes only as needed. *Rogge v. Petroleum County et al.*, 107 M 36, 45, 80 P 2d 380.

NOTE.—That provision of Chapter 98, Laws of 1937, (this section as amended)

which prevents the county commissioners in fixing the tax levy to include in the annual budget any amount for anticipated tax delinquency is unconstitutional in that it impairs the bond obligations contracted prior thereto and also violates Section 8 of Article XII of the Montana Constitution in that it prevents the levy of taxes for the payment of the obligations of the county. Attorney General's Opinions, No. 69, Vol. 18.

4613.6. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

References

State ex rel. Silver Bow County v. Brandjord, 107 M 231, 237, 82 P 2d 539.

CHAPTER 356, COUNTY FINANCES, BONDS AND WARRANTS

4622.1. Investment of sinking funds of counties, cities and towns—protection and keeping of securities. That the board of county commissioners of any county of the state of Montana, and the council or commission of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking funds of any such county, city or town, as is not needed for the payment of bonds or interest coupons, in United States government bonds or securities, state bonds or securities, county, city or school district bonds or county or city warrants or other bonds or securities which are supported by general taxation, except irrigation district bonds, and special improvement district or maintenance district bonds or warrants, provided, however, that all such investments must first be approved by the state examiner, and that all such bonds or securities must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, shall become due and payable; and provided further, that whenever any of the bonds, for which such sinking fund was established, are not yet due but are then redeemable under optional provisions thereof, such sinking funds shall not be subject to investment but shall be used and applied in payment and redemption of such bonds. The bonds and securities in which any such sinking funds are invested shall be kept in the custody of the county, city or town treasurer and held by him for the benefit of the county, city or town, as the case may be. It shall be the duty of such treasurer to properly protect such bonds and securities by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the sinking fund for which the investment was made. [As amended Sec. 1, Ch. 37, L. 1939.]

4630.1. Board of county commissioners may issue bonds for certain purposes. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

Subdivision (a). For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

Subdivision (b). For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same.

Subdivision (c). For the purpose of acquiring rights of way for and constructing public highways and bridges, or either of them.

Subdivision (d). For the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line.

Subdivision (e). For the purpose of funding, paying and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund or poor fund, when there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants and the levying of taxes sufficient to pay and retire such warrants within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

Subdivision (f). For the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds when there are not sufficient funds available to pay such bonds and it is deemed for the best interests of the county to refund such bonds.

Subdivision (g). For the purpose of funding, paying and retiring outstanding seed grain warrants lawfully issued under the provisions of section 4651, and for the purpose of funding, paying and retiring outstanding special relief warrants lawfully issued under the provisions of section 4692, when there is not sufficient money available to pay such warrants and the levying of special taxes sufficient to pay the same within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

Subdivision (h). For the purpose of funding, paying in full or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, when there are not sufficient funds available to pay such judgment and when sufficient money cannot be raised to satisfy such judgment by an annual tax levy of ten (10) mills levied on all the taxable property within the county through a period of three (3) years.

The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board of county commissioners and the judgment creditor.

Subdivision (i). Whenever the total indebtedness of a county exceeds the constitutional limitation of five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds. [As amended Sec. 1, Ch. 135, L. 1937.]

4630.3. Limitation on amount of bonds—issuance in excess of limitations void. No county shall issue bonds for any purpose which, with all

outstanding bonds and warrants, except county high schools bonds and emergency bonds, will exceed two and one-half per centum ($2\frac{1}{2}\%$) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum ($2\frac{1}{2}\%$), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident, or when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 1262.14, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void. The words "value of the taxable property", as used in this section, are used in the same sense as in Section 5 of Article 13, of the constitution, and shall be given the same meaning and construction. [As amended Sec. 2, Ch. 135, L. 1937.]

4630.4. Term of bonds—power to redeem—maximum interest. No bonds issued for any of the purposes designated in subdivisions (a), (b), or (c), of section 4630.1, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 4630.1, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 4630.1: No bonds issued to refund bonds issued later than June 30, 1923, shall be issued for a longer term than the unexpired term of the bonds to be refunded; no bonds issued to refund bonds issued prior to June 30, 1923, shall be for a longer term than ten (10) years unless this term will require an annual tax levy for the repayment of such bonds exceeding ten (10) mills on all the property subject to taxation in the county in which case the term may be so extended as to reduce the required annual tax levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 4630.1 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 4630.1 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not in any case exceed twenty (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided,

however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county five (5) years from the date of issue and on any payment due date thereafter before maturity if stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be six per cent (6%) per annum and shall be payable semi-annually. [As amended Sec. 3, Ch. 135, L. 1937.]

4630.6. Bonds issued for certain purposes may be issued without holding an election. Bonds issued for the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line; for the purpose of funding, paying and retiring outstanding county warrants issued prior to January 1, 1937; provided, that bonds issued for funding warrants shall not be in a greater amount than the amount of the warrants of such county outstanding on July 1st, 1931; for the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds issued prior to January 1, 1932; for the purpose of funding seed grain warrants and special relief warrants; for the purpose of funding, paying in full, or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction; and for the purpose of refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction; as set forth in subdivisions (d), (e), (f), (g), (h) and (i), of section 4630.1, may be issued without submitting the same to an election. In order to issue bonds for any of said purposes it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds.

All bonds sold without submitting the question of their issue to an election, as herein authorized, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids. [As amended Sec. 4, Ch. 135, L. 1937.]

4630.10. Notice of election—election hours—election officers.

NOTE.—The operation of this section is affected by section 5199.3 of this supplement.

4630.12. Who are entitled to vote—closing registration—lists of electors—poll books. In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the

county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare poll books for such election, as provided in section 568 of the revised codes of Montana for 1935, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors. [As amended Sec. 1, Ch. 138, L. 1939.]

4630.24. Treasurer's certificate as to principal and interest to be paid.

References

Rogge v. Petroleum County, 107 M 36, 44, 80 P 2d 380.

4630.27. County bond funds.

References

Rogge v. Petroleum County, 107 M 36, 43, 80 P 2d 380.

4630.29. Redemption of bonds before maturity. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest, becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs, and such bonds are held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay. Not less than fifteen (15) days before the next interest payment date, the county treasurer must give notice to the state board of land commissioners that on such interest payment date such bond or bonds, or coupon or coupons, will be paid, and the county treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon, or amortization bond coupon or coupons. Upon receipt of such amount the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto, and the coupons paid in the case of amortization bonds, and return the same, with his receipt, to the county treasurer.

Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding optional bonds or coupons in the case of amortization bonds of the issue or series to which such sinking and interest fund belongs, and which bonds or coupons are not yet due but are then redeemable or will become redeemable on the next interest payment date, and such bonds or coupons are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds or coupons in the case of amortization bonds as

the same will pay and redeem. The county treasurer must give notice to the holder of such bond, bonds, or coupons, if known to him, or to any bank or financial institution at which such bonds or coupons are payable, at least fifteen (15) days before the next interest payment date, that such bonds and coupons will be paid and redeemed on such date. The county treasurer must also publish in the official newspaper of the county, once a week for two (2) consecutive weeks immediately preceding such interest payment date, a notice that such bond, bonds, or coupons have been called in for redemption and will be paid in full on such interest payment date. If such bonds or coupons are payable at some bank or financial institution the county treasurer must remit to such bank or financial institution, before such interest payment date, an amount sufficient to pay and redeem such bonds or coupons. If such bonds are not presented for payment and redemption on such interest payment date interest thereon shall cease on such date.

All bonds or amortization bond coupons paid and redeemed under the provisions of this section must be paid and redeemed in the numerical order in which the same were issued or become due. [As amended Sec. 1, Ch. 46, L. 1939.]

4630.30. Investment of sinking and interest fund. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commissioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

When any bonds have been heretofore or are hereafter purchased with any sinking and interest fund moneys under the provisions of this section such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him, and such county treasurer shall at once endorse across the face of each such bond the word "paid" and the date thereof and shall sign such endorsement, and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "cancelled" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and cancelled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the cancelled coupons attached, to the county clerk with a report showing the numbers thereof and the amount paid on the purchase thereof, and the county clerk shall exhibit such bonds, with attached coupons and report, to the board of county commissioners at their next regular session.

If the board cannot purchase any of the outstanding bonds at such

reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, or in bonds or treasury certificates of the United States; provided however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least sixty (60) days before the date when the bonds of the county of such series or issue will become redeemable. [As amended Sec. 2, Ch. 46, L. 1939.]

CHAPTER 360, COUNTY OFFICERS—ENUMERATION, QUALIFICATIONS, BONDS, AND GENERAL PROVISIONS

4725. County officers enumerated.

References

Gagnon v. Jones et al., 103 M 365, 368, 62 P 2d 683.

4728. County and other officers, when elected and term of office. There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified.

The county attorneys, county auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the afore-said officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order. [As amended Sec. 1, Ch. 134, L. 1939.]

4741. Classification of counties.

Under the above rule, held, that section 4742, Revised Codes, requiring the various boards of county commissioners in each even-numbered year to make an order at their regular September session designating the class to which their counties belong as classified under section 4741, by the assessed valuation of the property therein, is directory only, and that therefore such an order made in February of the year 1937, instead of in September, 1936, substantially complied with the statute, no substantial rights having been impaired by the board's delay. *State ex rel. Jaumotte v. Zimmerman et al.*, 105 M 464, 471 et seq., 73 P 2d 548.

Id. The statute classifying counties according to the assessed valuation of the property therein, for the purpose of fixing salaries of county officers as well as the penalties of their bonds (sec. 4741, Rev. Codes), operates automatically to place a county in a certain class on the ascertainment of such valuation as shown from the records of the assessor's office in even-numbered years.

4742. County commissioners to designate class.

Held, that section 4742, Revised Codes, requiring the various boards of county commissioners in each even-numbered year to make an order at their regular September session designating the class to which their counties belong as classified under section 4741 by the assessed valuation of the property therein, is directory only, and

Id. Since county officers elected in 1936 were charged with the knowledge that their salaries might be changed by a reclassification of their county as provided by section 4741, Revised Codes, an Act in force since 1905, they took office subject to the contingency that their salaries might be reduced, depending upon the assessed valuation of the property in the county, and under such a state of facts the provision of section 31, Article V, of the Constitution, prohibiting the passing of a law increasing or diminishing an official's salary after his election is not violated.

Id. Held, that the salaries of all officers of Roosevelt county coming within the purview of section 4741, Revised Codes, formerly a county of the sixth class but reduced to the seventh class upon reclassification in 1936, after the first Monday in January, 1937, the date on which operations on the seventh class basis began were affected by such change as of that date, regardless of the actual date a new term of office began or the duration thereof.

that therefore such an order made in February of the year 1937, instead of in September, 1936, substantially complied with the statute, no substantial rights having been impaired by the board's delay. *State ex rel. Jaumotte v. Zimmerman et al.*, 105 M 464, 471 et seq., 73 P 2d 548.

CHAPTER 361, CONSOLIDATION OF COUNTY OFFICES

4749.7. Salary and bond of officer upon consolidation. When two or more offices are consolidated under a single officer, such officer shall receive the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidation and shall give a bond in the same amount as would have been required of such officer; provided, that where county offices are consolidated as herein above described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board of county commissioners; and provided further, that the board of county commissioners shall determine the number of deputies, stenographers and clerks the said officers may appoint. [As amended Sec. 1, Ch. 107, L. 1937.]

CHAPTER 362, COUNTY TREASURER**4750. Duties of county treasurer.****References**

City of Scranton, Pa. v. Aetna Casualty Co., 11 F. S. 986.

4753. Registry of warrants—interest.

Under sections 4753-4759, Revised Codes, counties have the power to issue anticipatory warrants. *State ex rel. Silver Bow County v. Brandjord*, 107 M 231, 235, 82

P 2d 589.

References

State ex rel. Blenkner v. Stillwater County, 104 M 387, 391, 66 P 2d 788.

4754. Notice of redemption of warrants.**References**

State ex rel. DeKalb v. Ferrell, 105 M 218, 226, 70 P 2d 290; State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

4756. Priority in payment of warrants.

To entitle the holder of a registered warrant to a writ of mandate to compel a county treasurer, as the custodian of the funds of an irrigation district, to make payment thereon he must show a clear legal duty on the part of the defendant to make payment and his ability to comply with the writ, i. e., he must show that the treasurer can pay the sum demanded and still have sufficient money on hand in the fund out

of which it is to be paid, to pay outstanding unpaid prior registered warrants with accrued interest. State ex rel. DeKalb v. Ferrell, 105 M 218, 226.

References

State v. Stillwater County et al., 104 M 387, 391, 66 P 2d 788; State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

4758. Funds reserved sixty days therefor.

To entitle the holder of a registered warrant to a writ of mandate to compel a county treasurer, as the custodian of the funds of an irrigation district, to make payment thereon he must show a clear legal duty on the part of the defendant to make payment and his ability to comply with the writ, i. e., he must show that the treasurer can pay the sum demanded and still have sufficient money on hand in the fund out of which it is to be paid, to pay outstand-

ing unpaid prior registered warrants with accrued interest. State ex rel. DeKalb v. Ferrell, 105 M 218, 226.

Under sections 4753-4759, Revised Codes, counties have the power to issue anticipatory warrants. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

References

State v. Stillwater County et al., 104 M 387, 391, 66 P 2d 788.

4767.4. Interest requirements on public deposits not to violate federal acts or regulations. The interest requirements on deposits of public funds under the laws of the state of Montana or otherwise by county, city and town treasurers shall not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system or the federal deposit insurance corporation or any other fiscal agency of the United States or created by it, of which the banks of this state generally may be members or debtors. [En. Sec. 1, Ch. 104, L. 1937.]

CHAPTER 363, SHERIFF**4773. "Process" and "notice" defined.**

The decision of the supreme court on application for a writ under its original jurisdiction constitutes its judgment, the writ subsequently issued not being its

judgment or decree but merely the court process issued for the enforcement thereof. State ex rel. Clark v. District Court, 103 M 145, 147, 61 P 2d 836.

4781. Liability for refusing to levy or sell.**References**

Weir v. Hum Tong, 100 M 1, 7, 46 P 2d 45.

CHAPTER 364, COUNTY CLERK**4799. Indexes to be kept.**

Held, that a board of county commissioners may under its implied powers as the governing body of the county, properly authorize the installation and maintenance of a tract index in the office of the county

clerk for the purpose of securing reliable information with relation to lands sold for taxes and facilitating the matter of making application for tax deeds. Ransom v. Pingel, et al., 104 M 119, 122, 65 P 2d 616.

4801. To record decrees of partition or affecting title to real property.

While sections 4801 and 4802, Revised Codes, provide for the recording of final judgments affecting title to real property and define the effect thereof so far as imparting constructive notice thereof to lienholders and others is concerned, they do not declare that a judgment attaches as a lien on real property only when so record-

ed; section 9410, on the other hand, providing in positive terms that a lien upon such property attaches when the judgment is docketed without making recordation of the judgment a condition precedent to its becoming a lien. *Gaines v. Van Demark*, 106 M 1, 10, 74 P 2d 454.

4802. Filing of copy to impart notice.

While sections 4801 and 4802, Revised Codes, provide for the recording of final judgments affecting title to real property and define the effect thereof so far as imparting constructive notice thereof to lienholders and others is concerned, they do not declare that a judgment attaches as a lien on real property only when so record-

ed; section 9410, on the other hand, providing in positive terms that a lien upon such property attaches when the judgment is docketed without making recordation of the judgment a condition precedent to its becoming a lien. *Gaines v. Van Demark*, 106 M 1, 10, 74 P 2d 454.

4810. Records open to inspection.

While the right to inspect public records is subject to regulation, the regulation must be reasonable and not of such arbitrary nature as to in effect deny the appli-

cant the right of inspection. *State ex rel. Holloran v. McGrath*, 104 M 490, 497, 67 P 2d 838.

4811. Duties of county clerk.

While the right to inspect public records is subject to regulation, the regulation must be reasonable and not of such arbitrary nature as to in effect deny the appli-

cant the right of inspection. *State ex rel. Holloran v. McGrath*, 104 M 490, 497, 67 P 2d 838.

CHAPTER 371, CONSTABLES AND JUSTICES OF THE PEACE

4863. Justices not to practice law.

References

State v. Merchants' Credit Service, Inc., 104 M 76, 119, 66 P 2d 337.

CHAPTER 372, SALARIES AND FEES OF COUNTY OFFICERS AND DEPUTIES, JURORS AND WITNESSES

4866. Counties classified.

References

State ex rel. Jaumotte v. Zimmerman et al., 105 M 464, 472, 73 P 2d 548.

4880. Maximum number of deputy treasurers, assessors, auditors and county attorneys. The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year. In counties of the first, second and third classes, assessors may be allowed one deputy, and during the months of March, April, May, June, July and August, not to exceed two additional deputies at a salary not exceeding one hundred dollars per month; in counties of all other classes assessors may be allowed one deputy during the months of March, April, May, June and July, at a salary not exceeding one hundred dollars per month. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed

by the board of county commissioners, not to exceed one chief deputy and one deputy. [As amended Sec. 1, Ch. 97, L. 1939.]

4884. Mileage of all officers.

Mileage and traveling expenses allowed by law to a county officer (assessor) may properly be considered "earnings" within the meaning of section 9429, Revised Codes, exempting certain earnings of a judgment debtor when it appears that such earnings

are necessary for the use of his family, the word "earnings" being more comprehensive than "wages" and "salary". Williams v. Sorenson et al., 106 M 122, 127, 75 P 2d 784.

4916. Fees of sheriff. For the service of summons and complaint on each defendant, one dollar (\$1.00);

For levying and serving each writ of attachment of execution on real or personal property, one dollar (\$1.00);

For service of attachment on the body or order of arrest on each defendant, one dollar (\$1.00);

For the service of affidavit, order, and undertaking in claim and delivery, one dollar (\$1.00);

For serving a subpoena, twenty-five cents (25c) for each witness summoned;

For serving writ of possession or restitution, two dollars (\$2.00);

For trial of the right of property or damages, including all services except mileage, three dollars (\$3.00);

For taking bond or undertaking in any case authorized by law, one dollar (\$1.00);

For serving every notice, rule or order, one dollar (\$1.00), for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty cents (20c) for each folio;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, one dollar (\$1.00);

For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed two dollars and fifty cents (\$2.50) per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad he shall receive eight and one-half cents (8½c) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one or more persons are

transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 4885 of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time, or when any paper or papers are served on more than one person on the same trip, but one mileage must be allowed or charged, and in the service of subpoenas, but one mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two or more officers travel in the same automobile in the discharge of any duty but one mileage shall be allowed. [As amended Sec. 1, Ch. 139, L. 1937.]

4922. Fees of coroner. The coroner is entitled to receive and collect for his own use the following fees:

For each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of five dollars (\$5.00), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

For each day or fraction of day engaged in holding an inquest, five dollars (\$5.00), provided, that not more than two days fees shall be charged for holding an inquest in any one case;

For subpoenaing each witness, including copy of subpoena, thirty cents (30c);

For summoning each juror, including copy of summons, thirty cents (30c);

For each oath administered, five cents (5c);

For making transcript of testimony, per folio, fifteen cents (15c);

For each mile actually traveled in the performance of any duty, seven cents (7c);

For filing papers, each, five cents (5c);

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars (\$2100.00) in any one year, including compensation paid all clerks, stenographers and other clerical assistants employed by him, provided the coroner in a county having a population of 50,000 or more

shall receive a salary of not more than \$3300.00 per year and mileage as above provided in lieu of all fees above mentioned, and all clerical and stenographic help shall be included in such salary. Said population to be based on the United States Census of 1930.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services. [As amended Sec. 1, Ch. 9, L. 1937.]

CHAPTER 380, PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

4993. Small tracts must be platted, surveyed and certified before sale.

Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, or small areas less than the United States legal subdivision of ten acres, must cause the same to be surveyed, platted, certified, and recorded according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks and playgrounds, and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat. [As amended Sec. 1, Ch. 5, L. 1939.]

4996. Officers of city of second and third classes.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

CHAPTER 381, OFFICERS AND ELECTIONS

5007. Who eligible.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5011. Election judges and clerks—voting places—additional boards.

The council or other governing body must appoint judges and clerks of election, and places of voting. Where the city or town is divided into wards there must be at least one voting place in each ward and there may be as many more as the council or other governing body shall fix, and the elector must vote in the ward in which he resides. In cities and towns divided into wards the election precincts must correspond with the wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides. In cities and towns operating under the commission, or the commission-manager plan of municipal government, where there are no wards for election purposes and the officers of the city or town are elected at large, the election precincts shall correspond with the election precincts in such city or town as fixed by the board of county commissioners for state and county elections, but such precincts may be by the city commission divided into as many voting precincts, to facilitate the voting and counting of the vote, as the city commission shall by ordinance provide, and the elector shall

vote in the voting precinct so designated, in which he resides. For all municipal elections the city council or other governing body may appoint a second or additional board of election judges for any voting precinct in which there were cast three hundred and fifty or more votes in the last general city election or in which council or other governing body believes as many as three hundred and fifty ballots will be cast in the next general city election, and such additional board of election judges shall have the same powers and duties, and under the same conditions, as the second or additional board of election judges for general elections appointed by boards of county commissioners under the provisions of section 587 of the Revised Codes of Montana of 1935, as amended by Chapter 61 of the Laws of the Twenty-fifth Legislative Assembly of the State of Montana. In all cities and towns where voting machines are used, the city council or other governing body must arrange the precincts so that there will be no more than six hundred votes in any voting precinct. All municipal elections must be conducted in accordance with the general laws of the state of Montana relating to such election. [As amended Sec. 1, Ch. 19, L. 1939.]

5013. Oath and bonds—vacancy.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5022. Salary of treasurer. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, (except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed three thousand dollars, in cities of the second class must not exceed two thousand dollars, and in cities of the third class it must not exceed seven hundred dollars, and in towns it must not exceed five hundred dollars; provided, however, that where a city of the third class, or a town, shall own and operate a public utility or utilities such as water supply, water works, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may be paid additional salary or compensation to be fixed by ordinance and the duties of the treasurer with reference to the collection and safe-keeping of the revenues derived from such public utility shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine. [As amended Sec. 1, Ch. 69, L. 1939.]

CHAPTER 382, EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

5031. Mayor to preside, sign warrants, etc.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5034. Duties of city treasurer.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5035.1. Closing and removing inactive accounts. Whenever the council of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to remove inactive accounts from its records where said accounts shall not have any further purpose, it shall be lawful for said council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of said city or town, after which the council shall allow the same and cause the inactive funds to be closed and not continued in the record of active funds. [En. Sec. 1, Ch. 57, L. 1939.]

CHAPTER 383, LEGISLATIVE POWERS—POWERS OF CITY COUNCILS—ORDINANCES—INITIATIVE AND REFERENDUM

5039. Powers of city councils.

The powers granted to cities and towns are two-fold: Legislative, public or governmental, importing sovereignty, and proprietary, or quasi-private, conferred for the private advantage of the inhabitants and of the city or town as a legal person; as to the first class, legislative power is supreme except as limited by express constitutional prohibitions; as to the second, the theory of local self-government controls. State ex rel. Kern et al. v. Arnold, 100 M 346, 358, 49 P 2d 976.

A municipal corporation is a body politic, created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community. State ex rel. McIntire v. City of Libby, 107 M 216, 219, 82 P 2d 587.

References

Guillot v. State Highway Com. et al., 102 M 149, 154, 56 P 2d 1072.

5039.3. Issuing licenses.

Where the power to license has been properly delegated to cities and towns as it has been by section 5039.3, Revised Codes, granting city and town councils the power to fix the amount, terms and manner of issuing and revoking licenses, or refuse to issue them, courts will not inter-

fere in its exercise except when there has been a gross abuse of the discretion in the premises. State v. City Council of the City of Libby, 107 M 216, 219, 82 P 2d 587.

References

State v. Stark, 100 M 365, 374, 52 P 2d 890.

5039.5. Streets, alleys, sidewalks, parks and public grounds.

With relation to work to be done upon the streets of a city, such streets are within the exclusive jurisdiction of the municipality through its council. State et al. v.

Healy et al., 105 M 227, 232, 70 P 2d 437.

References

Lloyd v. City of Great Falls et al., 107 M 442, 446, 86 P 2d 395.

5039.6 Lighting and cleaning streets—regulation of sidewalks—removal of offensive material from public ways and grounds—tax levy.

The authority granted by section 5039.6, Revised Codes, to cities to remove garbage and to provide a special tax against the property from which it is removed to meet the cost falls within the police power in the interest of public health. Northern Pacific Ry. Co. v. Lutey, 104 M 321, 324 et seq., 66 P.2d 785.

Id. Judgment on the pleadings, held properly denied in an action by a railway company to recover a special tax levied by

a city for the removal of city garbage, under section 5039.6 supra, where the issue whether garbage had been removed from plaintiff's premises was raised by the pleadings, plaintiff contending that all garbage and refuse matter had at all times, and would be in the future, removed by itself, and defendant alleging that plaintiff's property had been benefited by the collection of the garbage.

5039.11. Lighting of railroad tracks—crossings—enforcement of requirements.

References

Jarvella v. Northern Pacific Ry. Co., 101 M 102, 111, 53 P 2d 446.

5039.14. Water regulation.

References

Johnson v. City of Billings et al., 101 M 462, 478, 54 P 2d 579.

5039.26. Fire department—alarm—police telegraph.

While courts may experience difficulty in determining whether a city in owning a fire-fighting equipment and in employing firemen is acting in its governmental or proprietary capacity, it would seem that the difficulty is no greater than in determining when the acts of an agent are those

of the principal, or when those of an employee create liability on the part of the employer; difficulty of determination does not render the problem incapable of solution. *State ex rel. Kern et al. v. Arnold*, 100 M 346, 358, 49 P 2d 976.

5039.61. Disposal or lease of municipal property—when approval of electors required—park commissioners power. The city or town council has power; to sell, dispose of, or lease any property belonging to a city or town, provided, however, that such lease or transfer be made by ordinance or resolution passed by a two-thirds vote of all the members of the council; and provided further that if such property be held in trust for a specific purpose such sale or lease thereof be approved by a majority vote of taxpayers of such municipality cast at an election called for that purpose; and provided further that nothing herein contained shall be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by sub-division 5 of section 5162, revised codes of Montana of 1935. [As amended Sec. 1, Ch. 35, L. 1937.]

5039.74. Power of condemnation. The city or town council has power: To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer or waterway in the city or town, and for establishing, constructing and maintaining any sewer, waterway or drain ditch outside of the corporate limits of the municipality, or for any other municipal and public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceedings thereunder had as provided in the code of civil procedure concerning eminent domain. [As amended Sec. 1, Ch. 180, L. 1937.]

5043. Organized cities and towns authorized to take by gift, donation, devise, etc.

Sections 5043 and 5044, Revised Codes, adopted in 1917, contemplating that lands acquired by a city by gift or donation must be used for the particular purpose for which given or donated, held inapplicable in the instant case because not in existence when the land in question was granted to the city. *Lloyd v. City of Great Falls et al.*, 107 M 442, 450 et seq., 86 P 2d 395.

Sections 5043 and 5044, Revised Codes, adopted in 1917, contemplating that lands acquired by a city by gift or donation must be used for the particular purpose for which given or donated, held inapplicable in the instant case because not in existence when the land in question was granted to the city. *Lloyd v. City of Great Falls et al.*, 107 M 442, 450 et seq., 86 P 2d 395.

5044. Who may make gift, donation, or grant—property included therein—how used and administered.

Sections 5043 and 5044, Revised Codes, adopted in 1917, contemplating that lands acquired by a city by gift or donation must be used for the particular purpose for which given or donated, held inapplicable in the instant case because not in existence when the land in question was granted to the city. *Lloyd v. City of Great Falls et al.*, 107 M 442, 450 et seq., 86 P 2d 395.

Sections 5043 and 5044, Revised Codes, adopted in 1917, contemplating that lands acquired by a city by gift or donation must be used for the particular purpose for which given or donated, held inapplicable in the instant case because not in existence when the land in question was granted to the city. *Lloyd v. City of Great Falls et al.*, 107 M 442, 450 et seq., 86 P 2d 395.

CHAPTER 384, MUNICIPAL CONTRACTS AND FRANCHISES

5070. Awarding contracts. All contracts for work, or for supplies, or for material, for which must be paid a sum exceeding five hundred (\$500.00) dollars, must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official news-

paper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise in a weekly newspaper published therein, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made twice, the first publication to be made not more than twenty-two (22) days nor less than fifteen (15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded. [As amended Sec. 1, Ch. 18, L. 1939.]

CHAPTER 385, PRESENTATION AND PAYMENT OF CLAIMS— CITY WARRANTS

5078. Presentation of claims—limitation of actions.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5079. Allowance and payment of claims—cash basis.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5080. Defective highways and public works—notice of injuries—actual notice required for liability—record of defects—exception. Before any city or town in this state shall be liable for damages to person and/or property for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect or obstructions in any bridge, street, road, sidewalk, culvert, park, public ground, ferryboat, or public works of any kind in said city or town, it must first be shown that said city or town had actual notice of such defect or obstruction and reasonable opportunity to repair such defect or remove such obstruction before such injury or damage was received; the city clerk must make a permanent record of all such reported defects and shall report to the city street commissioner immediately upon notice of such defect or obstruction; and the person alleged to have suffered such injury or damage, or someone in his behalf, shall give to the city or town council, commission, manager, or other governing body of such city or town, within sixty days after such injury is alleged to have been received or suffered, written notice thereof, which notice shall state the time when and the place where such

injury alleged to have occurred. Provided, however, that this section shall not exempt cities and towns from liability for negligence because of failure to properly place signs, markers or signals to warn persons of excavations or other obstructions existing and caused by said city or town, upon any bridge, street, alley, road, sidewalk, pavement, culvert, park, public ground, ferryboat or public works of any kind. [En. Sec. 1, Ch. 122, L. 1937.]

5080.1. Non-liability of municipality for injuries caused by accumulations of snow or ice in streets or public ways.

Under section 6, Article III, of the Constitution, argument that, since the enactment of Chapter 132, Laws of 1939 (section 5080.1), relieving cities and towns from liability for injuries sustained by a fall on an icy sidewalk, such person would be

deprived of his constitutional right to have a remedy if the abutting owner be not held liable, held not meritorious. *Stewart v. Standard Publishing Co.*, 102 M 43, 48, 55 P 2d 694.

5081. City warrants—rate of interest.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

5083. Registry of warrants.

References

Lillis v. City of Big Timber, 103 M 206, 211, 62 P 2d 219.

CHAPTER 386, BUDGET SYSTEM FOR CITIES AND TOWNS

5083.1. Municipal budget law—application—definitions.

If the Budget Act (Chap. 121, Laws of 1931) contains any provisions in direct conflict with Chapter 55, Laws of 1935—the Act prescribing a minimum wage for

policemen in cities of the first class—the latter controls the former as to such conflicts. *State ex rel. Gebhardt v. City Council*, 102 M 27, 41, 55 P 2d 671.

CHAPTER 387, JUDGMENTS—RESPONSIBILITY FOR DAMAGES
BY RIOTS

5084. Judgments against cities and towns—mode of payment.

Where a money judgment against a town in excess of \$10,000 is outstanding the town council is, under sections 5084 and 5085, Revised Codes, during a period of three years, vested with discretionary power to select either method of performance of its duty to provide for its payment,

i. e., levy a tax, where there are insufficient funds in the general fund, or fund the debt, and during the three-year period the council may not be coerced to make payment by writ of mandate. *State v. District Court et al.*, 100 M 476, 479, 49 P 2d 1119.

5085. Judgment may be funded.

Where a money judgment against a town in excess of \$10,000 is outstanding the town council is, under sections 5084 and 5085, Revised Codes, during a period of three years, vested with discretionary power to select either method of performance of its duty to provide for its payment,

i. e., levy a tax, where there are insufficient funds in the general fund, or fund the debt, and during the three-year period the council may not be coerced to make payment by writ of mandate. *State v. District Court et al.*, 100 M 476, 479, 49 P 2d 1119.

CHAPTER 390, POLICE DEPARTMENT

5095. Police department.

References

State ex rel. Gebhardt v. City Council, 102 M 27, 32, 55 P 2d 671.

5098. Police commission required in first and second class cities—other cities and towns may provide for commission by ordinance. In cities of the first and second class the mayor shall nominate, and with the consent of

the city council appoint three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years, and that one such member must be appointed annually, at the first regular meeting of the city council in May of each year. Provided, that at the first meeting of the council in the month of May after the passage of this act, the mayor, subject to the approval of the council, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council, not to exceed ten dollars per day, nor more than fifty dollars per month for any month for each member in cities of the first and second class.

The council of any town or city, other than a city of the first and second class, may provide by ordinance for such a police commission in any such city or town. [As amended Sec. 1, Ch. 96, L. 1939.]

5107. Salary of chief of police.

References

State ex rel. Gebhardt v. City Council, 102 M 27, 32, 55 P 2d 671.

5108.1. Age restriction on policemen—not applicable to veterans, present members and police reserves.

References

State ex rel. Gebhardt v. City Council, 102 M 27, 29, 55 P 2d 671.

5108.2. Police reserves—qualification of members. Whenever any person who has heretofore or shall hereafter have completed twenty (20) years or more in the aggregate, either as a probationary officer, a regular member of such police department, or as a special police officer of said police department, in any capacity or rank whatever in cities of the first and second class, provided that such police officer serving in the United States army or navy, in time of war or national emergency, shall be given credit upon his police record for such service in the same manner as though on active police duty for such time, he may at his option pass from the active list of police officers of such city or town and become a member of the police reserves of said city or town, and if he reaches the age of sixty-five (65) years while in active service, he shall pass from the active list of police officers of such city or town and become a member of the police reserves of such city or town. [As amended Sec. 1, Ch. 78, L. 1937.]

5108.5. Payment of police reserves—payments to widow of children of deceased policemen. Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half ($\frac{1}{2}$) the salary he was receiving during the year prior to the time he passed to the police reserve list.

Upon the death of any policeman or any officer of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves fund, monthly payments in such amount as the trustees of the said fund shall deem proper, but in no event exceeding the sum of fifty dollars (\$50.00)

a month. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen years younger than her husband, unless she shall have been married to and living with her husband for the ten years immediately preceding his death. And if such policeman or officer shall leave a dependent minor child, or dependent minor children, then upon the death of such policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, his surviving dependent minor child, or dependent children, collectively, if there be more than one dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until such minor child, or minor children, shall have attained the age of sixteen years or shall have married, provided further that the payments herein provided for to be made to the surviving widow and/or children shall not be made if such payments will require an increase in the millage tax levy now provided for by section 5108.7, Revised Codes of Montana, 1935.

Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of such child or children, for the use of such minor, until such minor shall have reached the age of sixteen (16) years or shall have married and in case there is more than one minor child, upon each such child reaching the age of sixteen (16) years the pro rata payments to such child shall cease and shall be made to the remaining minor child or children until the youngest child shall reach the age of sixteen (16) years or shall have married.

The term "policeman", or "police officer", as herein used shall include all those on the reserve list, as well as "active police", "police officer", and/or "patrolman". [As amended Sec. 1, Ch. 15, L. 1939.]

5108.7. Tax levy for payment of police reserves. For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list. [As amended Sec. 2, Ch. 78, L. 1937.]

5108.16. Minimum wage of police in first class cities. That from and after the passage and approval of this act there shall be paid to each member of the police department of cities of the first class of the state of Montana, a minimum wage, for a daily service of eight consecutive hours' work, of at least one hundred sixty (\$160.00) dollars per month for the first year of service, and thereafter of at least one hundred sixty (\$160.00) dollars per month plus one (\$1.00) dollar per month for each additional year of service up to and including the tenth year of such additional service. [As amended Sec. 2, Ch. 96, L. 1939.]

5108.18. Reinstatement of officers having served twenty years or more. An applicant for a position on the police force who has already served twenty (20) years or more in the aggregate on the police force of the city

or town in the state of Montana in which he is applying for reinstatement, may make application within one (1) year from the date on which his name was removed from the active list of police officers, except that such application need not be made by officers who have heretofore been removed from said list, to the police commission of that city or town wherein he last served and his application must be considered by said police commission within thirty (30) days after receipt of said application, and said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force, and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement, and it shall be the duty of the mayor to submit to the city council of said city at its next regular meeting, the recommendation of the police commission, and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town. [En. Sec. 1, Ch. 205, L. 1939.]

5108.19. Rights on reinstatement. An applicant for reinstatement under the provisions of section 5108.18 may be reinstated and passed into the reserve list of police officers so as to enjoy all the benefits, pensions and rights which accrue to police officers placed on the reserve list in said city or town; and provided further that the pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force. [En. Sec. 2, Ch. 205, L. 1939.]

CHAPTER 391, FIRE DEPARTMENT—FIREMEN'S DISABILITY FUND

5109. Council to establish fire department. (a) There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this act provided.

(b) The council of cities and towns shall have charge of and supervision over the fire department thereof, with power to regulate its duties, to maintain a fire alarm telegraph, to erect engine, hose and hook-and-ladder houses, and provide engines and other implements and apparatus for the extinguishing of fire, and make such other ordinances not inconsistent with the provisions of this act and the other laws of the state for the government, direction and management of the fire department. [As amended Sec. 1, Ch. 4, L. 1937.]

References

State ex rel. Kern et al. v. Arnold, 100 M 346, 358, 49 P 2d 976; State ex rel. Casey v. Brewer et al., 107 M 550, 557, 88 P 2d 49.

5110. Fire department to consist of what—compensation.

References

State ex rel. Kern et al. v. Arnold, 100 M 346, 358, 49 P 2d 976; State ex rel. Casey v. Brewer et al., 107 M 550, 557, 88 P 2d 49.

5111. Powers of mayor to suspend firemen.

Appeal from a judgment of the district court setting aside an order suspending a member of a city fire department for the period of one year without pay for unbecoming conduct in receiving stolen property may not be dismissed on the theory

that after rendition of the judgment the mayor preferred a second charge of larceny against the officer resulting in his suspension for two years, and that thereby the question presented by the appeal had become moot, since the appeal involved

the right of the officer to receive his salary for the period during which he was suspended and the liability of the city

therefor. State ex rel. Wentworth v. Baker et al., 101 M 226, 229 53 P 2d 440.

5116.1. Levy of tax for volunteer fire departments.

References

State ex rel. Casey v. Brewer et al., 107 M 550, 557, 88 P 2d 49.

5117. Disability and pension fund.

Under sections 5117 et seq., Revised Codes, relating to the firemen's relief association, to entitle a fireman to the benefits of the disability and pension fund of the association, he must be a member of an organized fire department, whether it be a paid or a voluntary one, and con-

firmed as such by the city or town council. (secs. 5129, 5130); hence where a volunteer department was abolished, a member thereof may no longer qualify as an eligible one of the relief association. State ex rel. Casey v. Brewer et al., 107 M 550, 556 et seq., 88 P 2d 49.

5118. Source of fund. The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member and part paid member of said fire department relief association amounting to three (3) per cent of his regular monthly salary, the proceeds of a tax levy as provided by section 5119 of this act, and all monies received from the state of Montana as provided for by section 5127, and the interest of any portion of said fund. [As amended Sec. 1, Ch. 43, L. 1939.]

5119. Tax levy for fund. For the purpose of maintaining said disability and pension fund of such fire department relief association, in an amount equal to one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the city or town council or the commission or other proper authority of any municipality that is now or may hereafter be established under special or local law passed by the legislative assembly and adopted by the electors entitled to vote thereon, shall, annually, at all times when the said relief association fund contains an amount less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, in the manner provided by law, and at the time of the levy of the annual tax, levy a special tax of not to exceed one (1) mill on the dollar upon the taxable valuation of all taxable property assessed for taxes within the limits of said city, town or municipality, which said tax shall be collected as other taxes and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality. [As amended Sec. 2, Ch. 43, L. 1939.]*

5123. Benefits, allowed for, how allowed, and how paid.

References

State ex rel. Casey v. Brewer et al., 107 M 550, 556, 88 P 2d 49.

5129. Fire department relief association.

Under sections 5117 et seq., Revised Codes, relating to the firemen's relief association, to entitle a fireman to the benefits of the disability and pension fund of the association, he must be a member of an organized fire department, whether it be a paid or a voluntary one, and con-

firmed as such by the city or town council. (secs. 5129, 5130); hence where a volunteer department was abolished, a member thereof may no longer qualify as an eligible one of the relief association. State ex rel. Casey v. Brewer et al., 107 M 550, 556 et seq., 88 P 2d 49.

5130. Annual report of the secretary and treasurer, prescribing qualifi-

cations for membership, official bond of the treasurer and examination of books and accounts.

Under sections 5117 et seq., Revised Codes, relating to the firemen's relief association, to entitle a fireman to the benefits of the disability and pension fund of the association, he must be a member of an organized fire department, whether it be a paid or a voluntary one, and confirmed as such by the city or town council. (secs. 5129, 5130); hence where a volunteer department was abolished, a member thereof may no longer qualify as an eligible one of the relief association. *State ex rel. Casey v. Brewer et al.*, 107 M 550, 556 et seq., 88 P 2d 49.

5132. Pensions to retired firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years on the volunteer, paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund", a "service pension" in an amount not to exceed one-half of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. Provided, such association may at any time, by a majority vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided that no increase shall be effected as will increase the said "service pension" to an amount in excess of a sum equal to one-half of the monthly active duty compensation last received by the member. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75.00) per month. [As amended Sec. 1, Ch. 73, L. 1939.]

References

State ex rel. Casey v. Brewer et al., 107 M 550, 556, 88 P 2d 49.

5133. Disability pension. Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension", out of any moneys in the association's disability and pension fund, to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount not to exceed one-half of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. Provided, such association may at any time, by a majority vote of the members thereof, increase or decrease the said "disability pension" whenever the financial condition of the association's "disability and pension fund" shall warrant such action. Provided further that no member of said association shall be entitled to receive said "disability pension" so long as he may be receiving an allowance or award under the provisions of the Montana workmen's compensation act. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five dollars (\$75.00) per month. [As amended Sec. 2, Ch. 73, L. 1939.]

References

State ex rel. Casey v. Brewer et al., 107 M 550, 556, 88 P 2d 49.

5134. Pensions to widows or orphans. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association,

who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension", as provided by section 5132, or, prior to his decease, had suffered a sickness or injury in line of duty, and was receiving or was qualified to receive a "disability pension", as provided by section 5133, out of any money in the relief association's "disability and pension fund", a monthly pension in an amount not to exceed a sum equal to one-half of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. Provided such association may at any time, by a majority vote of the members thereof, increase or decrease the said pension; provided that no increase shall be effected as will increase said pension in an amount in excess of a sum equal to one-half of the monthly active duty compensation last received by the deceased member. Provided that said pension shall be paid to the within named widow only so long as she remains unmarried and further provided that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and receive a "service pension" as provided for by section 5132; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 5133. Provided further, that the pension herein provided for shall not be paid to the orphans of a deceased fireman after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five dollars (\$75.00) per month. [As amended Sec. 3, Ch. 73, L. 1939.]

References

State ex rel. Casey v. Brewer et al., 107 M 550, 556, 88 P 2d 49.

5135. Use of disability and pension fund of fire department relief association.**References**

State ex rel. Casey v. Brewer et al., 107 M 550, 556, 88 P 2d 49.

5138.1. Eight hour shifts for firemen—day off. The city council, city commission, or other governing body in cities of the first class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation. [En. Sec. 1, Ch. 15, L. 1937.]

5138.2. Minimum wages for firemen—increases. There shall be paid to each member of the fire departments of cities of the first class of the state of Montana a minimum wage for a daily service of eight (8) consecutive hours work of at least one hundred and sixty and no/100 dollars (\$160.00) per month for the first year of service, and thereafter of at least one hundred and sixty and no/100 dollars (\$160.00) per month, plus one

dollar (\$1.00) per month for each additional year of service up to and including the tenth year of such additional service, it being hereby expressly declared the purpose and intent of this act to fix the minimum wage of members of the fire department of said cities of the first class of the state of Montana at the sum of one hundred and sixty and no/100 dollars (\$160.00) per month and to increase said compensation annually thereafter at the rate of not less than one dollar (\$1.00) per month for each additional year of active service after the first year thereafter rendered by them, not exceeding ten (10) years of such service after the first year. [En. Sec. 2, Ch. 15, L. 1937.]

5138.3. Violation of this act shall be deemed a misdemeanor; penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00) dollars, or more than six hundred dollars (\$600.00), or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment. [En. Sec. 3, Ch. 15, L. 1937.]

5139.1. Hours of work for firemen in second class cities. The city council, city commission, or other governing body in cities of the second class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation. [En. Sec. 1, Ch. 200, L. 1937; Re-en. Sec. 1, Ch. 136, L. 1939.]

5139.2. Minimum compensation in second class cities—increase. There shall be paid to each member of the fire department of cities of the second class of the state of Montana a minimum wage for a daily service of eight (8) consecutive hours work of at least one hundred forty and no/100 dollars (\$140.00) per month for the first year of service, and thereafter of at least one hundred forty and no/100 dollars (\$140.00) per month, plus one dollar (\$1.00) per month for each additional year of service up to and including the tenth (10th) year of such additional service, it being hereby expressly declared the purpose and intent of this act to fix the minimum wage of members of the fire department of said cities of the second class of the state of Montana at the sum of one hundred forty and no/100 dollars (\$140.00) per month and to increase said compensation annually thereafter at the rate of not less than one dollar (\$1.00) per month for each additional year of active service after the first year thereafter rendered by them, not exceeding ten (10) years of such service after the first year. Provided, that a new fireman, that is, a paid fireman when he is first employed shall for the first six (6) months following his employment be on probation during which time his pay shall be one hundred ten and no/100 dollars (\$110.00) per month, thereafter, if he is still employed, his salary shall be one hundred forty and no/100 dollars (\$140.00) per month plus one dollar (\$1.00) per month for each additional

year of service up to and including the tenth year of such additional service. [En. Sec. 2, Ch. 200, L. 1937; Amd. Sec. 2, Ch. 136, L. 1939.]

5139.3. Volunteer fire departments in second class cities—compensation. In addition to a paid department, the city council, city commission or other governing body in cities of the second class may make provision for a volunteer fire department in addition to the paid fire department which said volunteer fire department shall be exempt from obligations in this act set out as applying to the paid department. Likewise shall the city commission or governing department be exempted as to compliance with this act insofar as the same may pertain to the said volunteer fire department by way of penalties and infringements; a volunteer being described as one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city, provided not more than three volunteer members are on said board of trustees, but who shall not be entitled to receive a "service pension". The governing body of said city may, at its discretion, pay an enrolled volunteer fireman the minimum of one dollar (\$1.00) for attending a fire, and a minimum of one dollar (\$1.00) for each hour or fraction of an hour after the first hour in active service at said fire, or returning any or all equipment to its proper place. [En. Sec. 3, Ch. 136, L. 1939.]

5139.4. Service of volunteer. In the attending of fires any volunteer shall act and serve under the supervision of the chief of the paid fire department. [En. Sec. 4, Ch. 136, L. 1939.]

5139.5. Violation of this act shall be deemed a misdemeanor—penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00) dollars, or more than six hundred (\$600.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment. [En. Sec. 3, Ch. 200, L. 1937; Re-en. Sec. 5, Ch. 136, L. 1939.]

5140. Appointment of chief engineer of fire department—his powers and duties.

References

State ex rel. Casey v. Brewer et al., 107 M 550, 556, 88 P 2d 49.

CHAPTER 393, PARKS AND PLAYGROUNDS—BOARD OF PARK COMMISSIONERS

5161. Park commissioners—appointment and organization—records and reports. There may be created in all cities of the first and second class a board of park commissioners, whether such cities be a council form of government or city manager form, which shall be composed of the mayor or city manager of the city and six other persons, to be appointed by the mayor or city manager of the city with the approval of the city council. The six persons so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 5004 of this code, for the office of mayor or city manager. The term of office of each park commissioner shall be two years from and after the first day of May

of the year in which he is appointed, and until his successor is appointed and qualified, save and except that three of the commissioners first appointed shall hold office for the period of one year from and after the first day of May, 1940, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the city government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by section 430 of these codes, which oath shall be filed in the office of the city clerk.

On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president, and one of their number vice-president, who shall hold their offices respectively for the term of one year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board, and perform such other duties as shall be required and directed by the board. The city clerk shall be ex-officio clerk of the board of park commissioners, and shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "record of board of park commissioners of the city of". It shall be the duty of the city clerk, as such clerk of the board of park commissioners, to keep an accurate account of all transactions of said board separate from other city accounts, and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year, which report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer, and he shall perform such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem. to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board. The minutes of said meeting in said record book contained, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state. [As amended Sec. 1, Ch. 32, L. 1939.]

5167.2. Cities, towns and school districts may engage in recreational program. Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of said city or town, and any school district, or board thereof, may cooperate for the purpose of operating a program of public recreation and playgrounds; and acquire, equip and maintain land, buildings, and/or other recreational facilities. [En. Sec. 1, Ch. 71, L. 1939.]

5167.3. Manner of taking action. Any city, town, school district, or any board thereof, including board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or it or they may delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any

board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board. [En. Sec. 2, Ch. 71, L. 1939.]

5167.4. Authority in carrying out program. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program, or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

- (1) Property under its custody and management;
- (2) Other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and
- (3) Private property, with the consent of its owners. [En. Sec. 3, Ch. 71, L. 1939.]

5167.5. Authority of state board of education when school property involved. In all cases where school property is utilized, the state board of education shall have authority:

- (1) To establish minimum qualifications of local recreational directors and instructors; and
- (2) To prepare, or cause to be prepared, published and distributed, adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this act. [En. Sec. 4, Ch. 71, L. 1939.]

5167.6. Use of school facilities. The facilities of any school district operating a recreational program pursuant to the provisions of this act shall be used primarily for the purpose of conducting a regular school curriculum and the use of school facilities for recreational purposes authorized by this act shall be secondary. [En. Sec. 5, Ch. 71, L. 1939.]

CHAPTER 396, MUNICIPAL REGULATION OF PLUMBING— PLUMBING LICENSE

5183. Plumbers must procure license.

Held that secs. 5183-5193, Revised Codes, relating to the municipal regulation of the business of plumbing, attached as unconstitutional on the ground that it delegates legislative power to the examining boards of municipalities, is not vulnerable to the contention that it is so lacking in detail

as to how examinations of applicants for plumbing licenses shall be conducted by the board of examiners, the nature of the examination, etc., as to amount to a conferring of arbitrary or capricious power upon the board. *State v. Stark*, 100 M 365, 367, 52 P 2d 890.

CHAPTER 397, TAXATION AND LICENSES

5194. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park purposes. The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities of the first class with a population of thirty-five thousand or over must not exceed one and four-tenths per centum of the assessed value of the taxable property in all cities of the first class, and all other cities and towns must

not exceed one and three-fourths per centum on the per centum of the assessed value of the taxable property of the city or town; and the council in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of maintaining public parks, the council in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding three mills on the dollar on the per centum of the assessed value of the taxable property of the city or town. [As amended Sec. 1, Ch. 48, L. 1937.]

5195. Cities and towns may raise money by taxation in excess of levy now permitted, how.

References

Northern Pacific Ry. Co. v. Lutey, 104 M 321, 326, 66 P 2d 785.

5198. Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election.

NOTE.—The operation of this section is affected by section 5199.3 of this supplement.

5199.2. Lists of registered voters—posting. [Repealed Sec. 2, Ch. 182, L. 1939.]

5199.3. Hours of elections relating to issuing bonds, creating debt or making special levy. Whenever any special election is held for the purpose of submitting to the qualified electors of any county, high school district, school district, city or town, the question of incurring an indebtedness for any purpose, issuing bonds or making a special or additional levy for any purpose, the polls shall be open at 12 o'clock noon and shall remain open until 8 o'clock P. M. of the same day; provided, that if any such special election is held on the same day as any general, county, school or municipal election or any primary election and at the same polling places with the same judges and clerks of election, then the polls shall be opened and closed at the same hours as the polls for such general, county, school, municipal or primary election. [En. Sec. 1, Ch. 2, L. 1937.]

5214. Collection of taxes—delinquent taxes.

References

State ex rel. City of Butte v. Healy et al., 105 M 227, 232, 70 P 2d 437.

5221. Duty of city clerk and treasurer. The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll-tax provided for in sections 2238 to 2252.2, inclusive, of this code. [As amended Sec. 1, Ch. 47, L. 1937.]

5222. Poll tax—how expended.

References

State ex rel. City of Butte v. Healy et al., 105 M 227, 232, 70 P 2d 437.

CHAPTER 398, SPECIAL IMPROVEMENT DISTRICTS

5229. Protests against proposed work. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work, or against

the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the clerk of the city or town council or commission, not later than 5 o'clock P. M. of the last day within said fifteen days period, and said clerk shall endorse thereon the date and hour of its receipt by him. At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than forty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than forty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district. The city or town council or commission may adjourn said hearing from time to time and protestants shall have the right to withdraw protest or protests at any time before final action thereon by the city or town council or commission. [As amended Sec. 1, Ch. 36, L. 1939.]

5240. Assessment to pay cost of improvements.

Where bonds are issued in payments of the cost of special city improvements the assessments levied upon the property in the district must, under section 5240, Revised Codes, necessarily include the interest on

the bonds to maturity as an essential part of the cost of such improvement. *State ex rel. Griffith v. City of Shelby*, 107 M 571, 576 et seq., 87 P 2d 183.

5245. Interest on assessments. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at a rate not exceeding six per cent (6%) per annum, and the treasurer, in collecting such special assessment

taxes, if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid. [As amended Sec. 1, Ch. 51, L. 1937.]

5249. Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.....,
United States of America,
State of Montana.

Warrant or Dollars

(Bond No.....) \$.....

Interest at the rate ofper cent per annum, payable annually.

Special improvement district coupon warrant or bond.

....., Montana,

Issued by the city of Montana.

The treasurer of the city of Montana, will pay to or bearer, the sum ofdollars as authorized by resolution No.....as passed on theday of 19....., creating special improvement district No. for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of Montana.

This warrant (or bond) bears interest at the rate of.....per cent per annum from the date of registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of.....in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened, and been performed, in the manner prescribed by the

laws of the state of Montana and the resolutions and ordinances of the city of....., Montana, relating to the issuance thereof.

(Seal)

Dated at....., Montana, this.....day of....., 19.....

City of, Montana.

By....., Mayor
....., City Clerk

Registered at the office of the city treasurer of....., Montana, this.....day of....., 19.....

.....
City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding 6 per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall be signed by the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signature of the mayor and clerk; provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council. Said bonds shall be in denominations of one hundred dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided, that the treasurer shall first pay out of such special improvement district fund annually the interest on all outstanding warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date, so fixed, interest shall cease. When it is provided by the resolution creating the district that the work be paid for in warrants (or bonds), the city council shall, by resolution, fix the denominations of such warrants (or bonds), which may be of one hundred dollars (\$100.00), or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent per annum, and provide for the payment or redemption of such war-

rants (or bonds) at a time certain, which time of payment must not exceed twenty (20) years from and after the date of issuance. [As amended Sec. 1, Ch. 23, L. 1937.]

Held, that in view of the speculative and indeterminable item of cost of a prospective special city improvement arising from possible delinquencies in the payment of assessments the legislature, in providing in section 5249, Revised Codes, that before the city treasurer shall pay the principal of bonds issued he must first pay out of the special improvement district fund the interest on all outstanding bonds, could not have intended to include interest accrued on outstanding bonds after maturity. *State ex rel. Griffith v. City of Shelby*, 107 M 571, 575 et seq., 87 P 2d 183.

Id. Where only 54 of an issue of 66 \$500 special improvement district coupon bonds had been paid on date of their maturity, January 1, 1930 (interest on all of them as represented by the coupons having then been paid), and in December, 1937, the holder of bond No. 55, the next in order

of registration, upon refusal of payment of principal and accrued interest thereon out of \$1,249 then in the special improvement fund, instituted mandamus proceedings against the city and its treasurer to compel payment, which was refused on the ground that under section 5249, supra, the treasurer was required to first pay all the accrued interest on the outstanding bonds before payment of any principal, held on appeal from a holding of the district court in consonance with such contention, that, under the above rules, the assessments made to pay for the improvement did not, and could not, provide a fund for payment of interest after maturity of the bonds, and that therefore plaintiff was entitled to payment of the principal of the bond sued upon, but not to interest accrued thereon after maturity thereof.

CHAPTER 399, MUNICIPAL BONDS AND INDEBTEDNESS

5278.1. Creation of indebtedness—submission to taxpayers. Whenever the council of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds for any purpose whatever, under its powers as set forth in any statute or statutes of the state of Montana, or amendments thereto, the question of issuing such bonds shall first be submitted to the qualified electors of such city or town in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing funding or refunding bonds to fund or refund warrants or bonds issued prior to and outstanding on the 1st day of April, 1937. In order to issue bonds to fund or refund warrants or bonds issued prior to and outstanding on April 1st, 1937, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be funded or refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds. [As amended, Sec. 1, Ch. 12 and Sec. 1, Ch. 108, L. 1937.]

5278.6. Petition for election—form—proof. No bonds shall be issued by a city or town for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on April 1, 1937, as authorized in section 5278.1, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided, and no such election shall be called unless there has been presented to the city or town council a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors

of the city or town, who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

(2) Which, and how many of the persons whose names are subscribed to such petition, are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town. [As amended Sec. 2, Ch. 108, L. 1937.]

5278.8. Notice of election—election hours—election officers.

NOTE.—The operation of this section is affected by section 5199.3 of this supplement.

5278.10. Who are entitled to vote—registration of electors. Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th)

day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare poll books for such election as provided in section 568 of the revised codes of Montana of 1935, and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors. [As amended Sec. 1, Ch. 182, L. 1939.]

CHAPTER 399-A, CONSENT TO FEDERAL MUNICIPAL BANKRUPTCY ACT

5279.1. Consent to application of federal municipal bankruptcy act to cities and towns. That the state of Montana does hereby consent and exact that any city or town of the state of Montana, upon and after the adoption by its city council or town council of an ordinance or resolution declaring (1) that it is insolvent or unable to meet its debts as they mature and (2) that it desires to effect a plan for the composition of its debts under the provisions of the "Municipal Corporation Bankruptcy Act" of the United States as amended, added to, and now existing, and providing (3) that said city or town shall proceed to the composition of its municipal indebtedness under the provisions of said act, and (4), upon the acceptance in writing of the plan of composition of its municipal indebtedness proposed by such municipality by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition, as provided in said act, shall have the right and power to submit itself and such proposed plan of composition to the jurisdiction of the bankruptcy court having jurisdiction of such matter and to be governed by the proceedings, orders and decrees of said court in the manner and extent, and as provided by said act, and to compose and to enter into, submit itself to, and to perform, the plan of composition in the manner prescribed and required by said act and the orders and decrees of said court thereunder and as affected thereby. [En. Sec. 1, Ch. 114, L. 1939.]

5279.2. Power of cities and towns—composition of indebtedness to state. Any such city or town shall have the power to do all things, and to comply with all orders and decrees, contemplated by said municipal corporation bankruptcy act and to issue its bonds and other securities for the carrying out and consummation of the composition of its debts as provided and contemplated by said act, and as required by the orders and decrees of said court. The state of Montana or any department or agency thereof holding any of the securities of any such city or town shall have the power to consent to any plan of composition of the indebtedness of any such city or town by the board having custody of and control over any such securities

or by any other official or officials having such custody and control. [En. Sec. 2, Ch. 114, L. 1939.]

CHAPTER 403, VACATION AND ABANDONMENT OF STREETS, PARKS, AND TOWNSITES—CHANGE OF NAMES OR NUMBERS

5307.1. Changing name or number of streets or avenues. Any town or city council may in its judgment, when it appears to the best interest of the town or city, and the inhabitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter subject to the conditions provided for in section 5307.2. [En. Sec. 1, Ch. 21, L. 1939.]

5307.2. Preparing and filing plat indicating changes. That the town or city engineer, or if there be no such officer the council may employ one for such purpose, shall prepare a plat showing such subdivisions, streets and avenues affected by such change, with the appropriate notation of change thereon, and upon approval of such plat by the council, and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in section 5307.2. [En. Sec. 2, Ch. 21, L. 1939.]

CHAPTER 404, HOUSING AUTHORITIES LAW—COOPERATION OF CITIES AND TOWNS—INVESTMENTS IN SECURITIES OF HOME OWNERS' LOAN CORPORATION AND INSTITUTIONS ORGANIZED UNDER NATIONAL HOUSING ACT

5309.1. Short title.

Construing Chapters 138 and 140, Laws of 1935 (secs. 5309 to 5309.34, Rev. Codes), together constituting the State Housing Law, held that the two Acts were passed in the exercise of the state's police powers, the purpose of the legislation being the eradication of slums and the substitution of safe and sanitary dwellings in place thereof, thus falling within the definition

of "public purposes", i. e., the promotion of the general welfare, which includes the public health, safety, morals, security, prosperity, contentment and equality before the law, for which public money may be spent and private property acquire, and said Acts held constitutional. *Rutherford v. City of Great Falls*, 107 M 512, 514 et seq., 86 P 2d 656.

5309.28. Declaration of necessity.

Construing Chapters 138 and 140, Laws of 1935 (secs. 5309 to 5309.34, Rev. Codes), together constituting the State Housing Law, held that the two Acts were passed in the exercise of the state's police powers, the purpose of the legislation being the eradication of slums and the substitution of safe and sanitary dwellings in place thereof, thus falling within the definition

of "public purposes", i. e., the promotion of the general welfare, which includes the public health, safety, morals, security, prosperity, contentment and equality before the law, for which public money may be spent and private property acquire, and said Acts held constitutional. *Rutherford v. City of Great Falls*, 107 M 512, 514 et seq., 86 P 2d 656.

5309.35. Investments by fiduciaries in Home Owners' Loan Corporation bonds, etc., authorized. Notwithstanding any other provision of law, it shall be lawful for any executor, administrator, guardian, or conservator, trustee or other fiduciary to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the Home Owners' Loan Corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States Government.

Notwithstanding other provisions of the law, it shall be lawful for any insurance company, building and loan association, bank, trust company, investment company and other financial institutions operating under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the Home Owners' Loan Corporation, in debentures issued by the federal housing administrator and in obligations of national mortgage associations. [As amended Sec. 1, Ch. 24, L. 1937.]

CHAPTER 408, COMMISSION-MANAGER PLAN OF GOVERNMENT

5486. Sewer, water, gas, or other connections—notice to property owners—service and contents. The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed. He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and character of connections required. Such notice shall be served by a person, designated by the director of public service, in the manner provided for the service of summons in civil actions. Non-residents of the municipality, or persons who cannot be found, may be served by one publication of such notice in a daily newspaper of general circulation in the municipality, if such there be, and if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed; and if they be not constructed within the said time, the work may be done by the municipality, and the cost thereof, together with a penalty of five per cent., assessed against the lots and lands for which such connections are made; provided, that the city commission may in its discretion order and direct that the cost of making any such connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed eight years, together with interest thereon not to exceed six per cent. per annum, payable annually, on the deferred payments. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance. [As amended Sec. 1, Ch. 45, L. 1939.]

CHAPTER 411, THE REVISION OF THE CODES

5531.11. Revised Codes of Montana of 1935 approved and legalized. That the revised codes of Montana of 1935, in five volumes as compiled, numbered and arranged by the code commissioner appointed by authority of section 5531.1 to section 5531.2, inclusive, and as certified to by said code commissioner are hereby, as to both form and substance, approved, legalized and adopted as the laws of Montana now in force and effect and the same are hereby declared to constitute the laws of Montana now in force and effect except such laws as may be adopted by the twenty-fifth session of said legislative assembly. [En. Sec. 1, Ch. 1, L. 1937.]

References

State v. Mitchell, 105 M 326, 336, 74 P 2d 417.

5531.12. Changes approved. All changes made by said code commissioner in the language or arrangement of any law of the state embodied in said codes and all additions of new sections made by said commissioner to said code, are hereby legalized, approved and given validity. [En. Sec. 2, Ch. 1, L. 1937.]

5531.13. Other acts not invalidated. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment, which is not included in said Revised Codes of Montana of 1935; and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, statute, or code section, omitted by said commissioner from said revision. [En. Sec. 3, Ch. 1, L. 1937.]

CHAPTER 412, THE PUBLICATION OF THE CODES

5553.8. Distribution of codes. The secretary of state, upon receipt of said published codes, shall distribute the same, or so many of them as may be necessary, in the following manner, to wit:

To each department of the state government of Montana, one copy.

To each member of the 24th and 25th legislative assemblies, one copy upon the payment to the state of Montana by any member receiving such copy the actual cost price thereof to the state.

To the state law library, two copies.

To the library of congress, two copies.

To the state historical and miscellaneous library, one copy.

To the state law librarian, for the purpose of exchanges with libraries, universities, and other institutions, such number of copies, not to exceed one hundred (100) as may be required by him.

To each of the component institutions of University of Montana, one copy.

To each of the United States district judges for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one copy.

To the county clerk of each county, three copies for the use of the various county officials.

To each county attorney, and to each clerk of the district court, one copy.

The secretary of the state may further distribute the revised codes of Montana, of 1935, at his discretion, to other departments of government not herein enumerated when the same are deemed absolutely necessary, and may exchange new sets for worn out sets when the latter are returned to his office. [As amended Sec. 1, Ch. 79, L. 1937.]

CHAPTER 412-A, CANCELLATION OF WAR DEFENSE LOANS

5637.1. Cancellation of war defense loans. The state treasurer and all other state offices or state departments, affected thereby, are hereby authorized to cancel of record, all war defense loans, seed or otherwise, made to or held by the state of Montana, under the provisions of sections 5624-5637 inclusive R. C. M., 1921, which were defaulted, and which have been extinguished by reason of the application of the statute of limitations, or other laws of the state of Montana. [En. Sec. 1, Ch. 190, L. 1939.]

CHAPTER 413, EMPLOYMENT OF SOLDIERS AND SAILORS

5653. Preference of soldiers and sailors in public employment. In every public department, and upon all public works of the state of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil war, the Spanish-American war, the Philippine insurrection, and of the late war with Germany and her allies, and any disabled civilian recommended by the state rehabilitation bureau, shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved, and honorably discharged Union soldiers and sailors and their widows of the Civil war, the Spanish-American war, the Philippine insurrection, and the late war with Germany and her allies, who have disabilities admitted by the veterans' administration of the United States to have been incurred in the service in any of said wars, where said disabilities do not interfere with the employment, said disabled veterans shall be given preference before the employment of able-bodied veterans as herein designated; provided, however, that none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take up arms in the defense of the United States; provided, however, that no person, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and, provided, further, that no person who has not been a resident of Montana for at least one (1) year immediately preceding an appointment shall be entitled to such preference; provided further, that for city or county employment no preference will be granted unless applicant under this act is also a resident of the city or town or county in which employment is sought. That any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or of any county and city thereof, or in any public department of said state and who has been denied said employment or appointment and feels that the spirit of this act has been violated and that he is in fact qualified physically, mentally and possesses business capacity, competency and education to discharge the duties of the position applied for, shall have the right to petition by verified petition the district court of the state of Montana in the county in which the work is to be performed, setting forth the facts of his application, qualifications, competency and his honorable discharge or other qualifications warranting him to preference under this act, and upon the filing of such petition any judge in said court shall forthwith issue an order to show cause to the appointing authority directing said appointing authority to appear in said court at a specified time and place, not less than five (5) nor more than ten (10) days after the filing of said verified petition, to show cause, if any he has, why said veteran or person entitled to preference should not be employed by him and that said district court shall have jurisdiction upon the proper showing to issue its order directing and ordering said appointing authority to comply with this law in giving the preference herein provided. [As amended Sec. 1, Ch. 66, L. 1937.]

CHAPTER 415, VETERANS' WELFARE FUND AND COMMISSION

5665.1. Veterans' memorial fund commission—members—compensation.

There is hereby created a veterans' memorial fund commission consisting of five (5) persons to be appointed by the governor. One (1) shall be appointed from a list of five (5) names submitted by the United Spanish War Veterans, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the Veterans of Foreign Wars, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the American Legion, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the Disabled American Veterans, of Montana. The fifth shall be appointed from a list of four (4) names submitted by the other four (4) members of the commission. One (1) of said persons shall be appointed for a period of one (1) year from and after the first day of May, 1939, and one (1) for a period of two (2) years from and after the first day of May, 1939, and one (1) for a period of three (3) years from and after the first day of May, 1939, and one (1) for a period of four (4) years from and after the first day of May, 1939, and the fifth member appointed from the list of names submitted by the other four (4) commissioners shall serve for one (1) year from and after the first day of May, 1939. The successors to the commissioners appointed from lists submitted by the United Spanish War Veterans, of Montana, Veterans of Foreign Wars, of Montana, American Legion, of Montana, and Disabled American Veterans, of Montana, shall be appointed for terms of four (4) years and shall be appointed from a list of five (5) names submitted by the organization represented by the appointee whose term is to expire. The successor to the fifth member appointed from a list of four (4) names submitted by the other four (4) commissioners shall be appointed annually from a list of four (4) names submitted by the other four (4) commissioners. The members of the commission shall at their first meeting after their appointment and on or before the first day of June of each year thereafter elect one (1) of their number chairman of the commission, shall adopt a seal for the commission, and make such rules for the administration of their office not inconsistent with this act as they may deem expedient, and they may thereafter amend or abrogate such rules. Three (3) of the members of the commission shall constitute a quorum to do business, and the concurrence of at least three (3) members of the commission shall be necessary to render a choice or decision by the commission. Each member of said commission shall receive as compensation for services the sum of eight (\$8.00) dollars per diem and actual travel expenses while engaged in work authorized by the commission. The veterans' memorial fund commission shall hereinafter be referred to as the commission. [En. Sec. 1, Ch. 131, L. 1939.]

5665.2. Control of veterans' memorial fund. The veterans' memorial fund heretofore created shall be placed under the exclusive control and jurisdiction of said commission which is empowered to expend said fund and the accruals thereto for the construction and maintenance of a veterans' memorial building, and the necessary expenses of the commission. [En. Sec. 2, Ch. 131, L. 1939.]

5665.3. Construction of veterans' memorial building—gifts. It shall be the duty of the commission to have constructed as soon as said commis-

sion deems feasible, a veterans' memorial building on state owned land adjacent to the state capitol at Helena, Montana, and plainly identifying said building as the "veterans' memorial building". The commission is by this act empowered to enter into agreements, contracts, or arrangements for the purpose of securing aid from an agency or agencies of the United States, and secure plans and estimates, and let contracts for the construction of the veterans' memorial building. The commission is empowered to receive and accept gifts, devises and bequests which will in no manner affect the identity of the veterans' memorial building. [En Sec. 3, Ch. 131, L. 1939.]

5665.4. Rules for management of building. Said commission may in writing adopt rules and regulations not inconsistent with this act for the care and management of the veterans' memorial building. [En. Sec. 4, Ch. 131, L. 1939.]

5665.5. Warrants. Warrants shall be drawn on the veterans' memorial fund in payment of claims approved by the veterans' memorial fund commission. [En. Sec. 5, Ch. 131, L. 1939.]

CHAPTER 416, BONDS OF TAXING UNITS OF STATE—PREFERENCE OF AMORTIZATION BONDS—NOTICE OF SALE—FISCAL AGENCIES FOR PAYMENT OF BONDS

5668.01. Bond transcripts to be examined by attorney general. The governing body of any school district, county, city or town shall submit a certified copy of all proceedings preliminary to such issue to the attorney general, together with such other proceedings, certificates and records as he may require, and request his report as to examination and validity. [En. Sec. 1, Ch. 139, L. 1939.]

5668.02. Report as to validity of bonds—filing of. It is hereby made the duty of the attorney general to examine certified copies of all proceedings preliminary to the issuance of bonds by any school district, county, city or town, which may be submitted to him for such examination, and if found regular and valid he shall deliver to the recording officer of such municipality a report of his examination and determination as to the validity of such bonds. A certified copy of such report shall be filed with the officer required by law to register said bonds and a notation thereof shall be entered in the bond register. [En. Sec. 2, Ch. 139, L. 1939.]

5668.03. Limitation of actions to contest validity of bonds approved by attorney general. No municipal bond of any issue whereof the preliminary proceedings have been submitted to and approved by the attorney general, shall be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance or sale of said bonds, unless an action to contest the validity thereof shall be brought within thirty days after the date of sale. [En. Sec. 3, Ch. 139, L. 1939.]

5668.04. Purpose of act—effect of invalidity of part. This act is intended to improve the marketability of bonds issued by school districts, counties, cities or towns, in order that said bonds may be sold upon the most favorable terms, and if any section, sub-section, sentence, clause or phrase is for any reason held unconstitutional such decision shall not affect the

validity of the remaining portions of the act, provided, they are sufficient to carry out the purposes as herein expressed. [En. Sec. 4, Ch. 139, L. 1939.]

CHAPTER 419, UNIFIED INVESTMENT PLAN FOR PUBLIC FUNDS UNDER JURISDICTION OF STATE

5668.19. Unified investment plan for investment of Montana trust and legacy fund.

Held, further, that the claim that by reason of the provision of the State Insurance Act requiring the fund thereunder collected to be invested as a part of the Montana Trust and Legacy Fund (Chap. 70, Laws of 1929), subject to the special

limitations of Article XXI of the Constitution, the credit of contributing counties and school districts is donated or loaned in violation of section 1, Article XIII, supra, cannot be maintained. *State v. Holmes*, 100 M 256, 289, 47 P 2d 624.

CHAPTER 421, PUBLIC WORKS CONTRACTORS' BOND

5668.41. Contractors performing public work to furnish bond—conditions.

Chapter 20, Laws of 1931 (sections 5668.41 to 5668.44, Rev. Codes), declares that any state board or commission (such as the state highway commission) entering into a contract for the doing of public work, shall require the contractor to furnish a bond that he will, *inter alia*, pay for any supplies furnished to a sub-contractor where the latter fails to do so. In an action by a merchant against a state highway contractor and his bondsman to recover for supplies furnished the former's subcontractor, brought in the county where plaintiff had his place of business, defendant contractor moved for a change of place of trial to the county of his resi-

dence; the court denied the motion. Held, that the court ruled properly, the action being one upon a contract between the contractor and the state made for the express benefit of a third person, the plaintiff merchant, triable in the county in which the person entitled to payment resided or had his place of business. *H. Earl Clack Co. v. Staunton et al.*, 100 M 26, 29, 44 P 2d 1069.

References

Kirkpatrick et al. v. Douglas et al., 104 M 212, 214, 65 P 2d 1169; *H. Earl Clack Co. v. Staunton et al.*, 105 M 375, 378 et seq., 72 P 2d 1022.

5668.42. Notice to contractor of furnishing provender, material or supplies required.

Contention of appellants that respondent in arguing on appeal that the notice required of one furnishing supplies to a subcontractor on a state highway project, to the contractor (sec. 5668.42, Rev. Codes) was not necessary under the facts because of the establishment of the relation of principal and agent between contractor and subcontractor, changed the theory of the case, held not well made, the fact of the agency having been pleaded in the complaint. *H. Earl Clack Co. v. Staunton et al.*, 105 M 375, 380 et seq., 72 P 2d 1022.

Id. Where a state highway contract declared that the highway commission would recognize a subcontractor only as an employee of the contractor, and the contractor agreed that he would pay all persons who should furnish supplies to subcontractors, a materialman who furnished supplies to a subcontractor commenced action against the contractor and his surety to recover therefor without having first given the notice required by section 5668.42, Revised Codes, which section makes the giv-

ing of such notice a condition precedent to the right to proceed to suit, such failure did not deprive him of his right to maintain the action instituted on the theory that the subcontractor was the agent of the contractor and that therefore the latter and his surety were liable for the indebtedness incurred, the relationship of principal and agent between the contractor and subcontractor having been established by the contracts between the commission and the contractor and that between the contractor and the subcontractor.

Id. Where the defendants in the above action, tried without a jury, did not make a motion for nonsuit but the court in effect dismissed the action on the ground that plaintiff had failed to give notice of its claim as required by section 5668.42, supra, to the contractor, but found that the evidence left the question whether the supplies furnished were all used in the construction work, or not, in doubt, and on appeal it is found that such notice was unnecessary and that plaintiff was entitled to recover in some amount, the su-

preme court will treat the finding of the lower court as tantamount to the granting

of a motion for nonsuit and remand the cause for a new trial.

5668.44. Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds.

Under section 5668.44, Revised Codes, relating to contractors' bonds on public works, and providing that mechanics, subcontractors and others may not maintain action on such bonds unless they shall have presented a notice of their claims to the officer or body acting for the state, county or other public body within fifteen days from and after the completion of the contract with an acceptance of the work by the affirmative action of such officer or board, held, that the limitation of fifteen days merely marks the time beyond which claims may not be filed, and does not prohibit the filing of claims before there is an acceptance of the work. *Kirkpatrick et al. v. Douglas et al.*, 104 M 212, 214 et seq., 65 P 2d 1169.

Id. Held, in construing section 5668.44, supra, that the legislature, in declaring that the acceptance of the work performed under a public contract shall be by affirmative action of the officer or board acting for the state or other public body, did not intend that the limitation of fifteen days within which parties might file their

claims should depend upon implication, silent acquiescence or other acts which might operate as an acquiescence, but did intend positive and affirmative action by the officer or body in charge of the work, excluding acceptance by the engineer in charge.

Id. In an action by a subcontractor against the contractor on a state highway project and the surety on his bond, it appeared that while the work had been accepted by a state highway engineer, there had been no affirmative action toward acceptance by the highway commission itself. Plaintiff's claim was not filed with the commission until several months after the alleged acceptance by the engineer. Held, under section 5668.44, supra, and the above rules, that such acceptance did not constitute an acceptance by the commission as contemplated by the statute, and that since plaintiff could, as he did, file the claim prior to acceptance by it, the filing was timely and the action not barred by the fifteen-day statutory limitation.

CHAPTER 421-A, REVENUE BOND REFINANCING ACT OF 1937.

5668.45. Short title. This act may be cited as "The Revenue Bond Refinancing Act of 1937." [En. Sec. 1, Ch. 121, L. 1937.]

5668.46. Definitions. The following terms wherever used or referred to in this act shall have the following meaning, unless a different meaning appears from the context:

(a) The term "municipality" shall mean any city or town of this state or the state water conservation board;

(b) The term "governing body", in the case of a city or town, shall mean the council, commission, or other body, board, officer or officers having charge of the finances thereof, and, in the case of the state water conservation board, shall mean the board itself;

(c) The term "law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(d) The term "enterprise" shall mean any work, undertaking, or project which the municipality is or may hereafter be authorized to construct and from which the municipality has heretofore derived or may hereafter derive revenues, for the refinancing, or the refinancing and improving of which enterprise, refunding bonds are issued under this act, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto;

(e) The term "federal agency" shall include the United States of America, the president of the United States of America, the federal emergency administrator of public works, Reconstruction Finance Corporation, or

any agency, instrumentality or corporation of the United States of America, which has heretofore been or may hereafter be designated or created by or pursuant to any act or acts or joint resolution or joint resolutions of the congress of the United States of America, or which may be owned or controlled, directly or indirectly, by the United States of America;

(f) The term "improving" shall mean reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing or improving or any one or more of all of the foregoing;

(g) The term "refunding bonds" shall mean notes, bonds, certificates or other obligations of a municipality issued pursuant to this act, or pursuant to any other law, as supplemented by, or in conjunction with this act;

(h) The term "refinancing" shall mean funding, refunding, paying or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations heretofore or hereafter issued to finance or to aid in financing the acquisition, construction or improving of an enterprise and payable solely from all or any part of the revenues thereof; including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates;

(i) The term "revenues" shall mean all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise;

(j) The term "holder of bonds" or "bondholder" or any similar term shall mean any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer;

(k) Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. [En. Sec. 2; Ch. 121, L. 1937.]

5668.47. Grant of power. Any municipality shall have power and is hereby authorized to refinance, or to refinance and improve, any enterprise, and for such purpose or purposes to borrow money and issue refunding bonds from time to time. [En. Sec. 3, Ch. 121, L. 1937.]

5668.48. Procedure for authorization. The refunding bonds shall be authorized by resolution or resolutions of the governing body of the municipality. Such resolutions may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution or resolutions shall take effect immediately upon the adoption thereof. No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality. [En. Sec. 4, Ch. 121, L. 1937.]

5668.49. Terms of refunding bonds. The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination or denom-

inations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. [En. Sec. 5, Ch. 121, L. 1937.]

5668.50. Validity of refunding bonds. Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purpose, notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof. The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued, or by contracts made in connection with the improving of any such enterprise. Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this act, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this act. [En. Sec. 6, Ch. 121, L. 1937.]

5668.51. Sale or exchange of refunding bonds. 1. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates or other obligations to be refinanced thereby.

2. If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds or other obligations of the municipality issued to finance or to aid in financing the acquisition, the construction, the improving, the refinancing, or the improving and refinancing, of an enterprise. The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due. The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued

interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

3. If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par at public or private sale in such manner and upon such terms as the governing body shall deem best for the interests of the municipality. [En. Sec. 7, Ch. 121, L. 1937.]

5668.52. Security of the refunding bonds. 1. The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution or resolutions of the governing body authorizing the issuance of the refunding bonds, and, subject to the constitution of the state of Montana, and to the prior or superior rights of any person, any municipality shall have power by resolution of its governing body to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

2. As additional security for any issue of refunding bonds hereunder, or any part thereof, any municipality shall have power, and is hereby authorized, by resolution of its governing body to confer upon the holders of the refunding bonds all rights, powers and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds or other obligations for the refinancing of which such refunding bonds shall have been issued including, but not limited to, the preservation of the lien of such notes, bonds or other obligations without extinguishment, impairment or diminution thereof. In the event any municipality exercises the power conferred by this paragraph, (a) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this paragraph and (b) each note, bond, certificate or other obligation of the municipality to be refinanced by any such refunding bonds, shall be kept intact and shall not be cancelled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate or other obligation has been refunded pursuant to the revenue bond refinancing act of 1937.

3. All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number, date of bonds, of sale, of execution or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution or resolutions authorizing the issuance of such refunding bonds.

4. Nothing in this section or in any other sections of this act shall be deemed in any way to alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality or to authorize the municipality to alter the terms of any such agreements, or to impair, or to authorize the municipality to impair, the rights and remedies of any creditors of the municipality.

5. Nothing in this section or in any other section of this act shall be deemed in any way to authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would con-

stitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt. [En. Sec. 8, Ch. 121, L. 1937.]

5668.53. Refunding bonds not debts. 1. No recourse shall be had for the payment of the refunding bonds, or interest thereon, or any part thereof, against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

2. The refunding bonds, and interest thereon, shall not be a debt of the municipality, nor a charge, lien or encumbrance, legal or equitable, upon any property of the municipality, or upon any income, receipts, or revenues of the municipality other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same, except from said revenues. [En. Sec. 9, Ch. 121, L. 1937.]

5668.54. Refunding bonds exempt from taxation. The refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate and transfer taxes. [En. Sec. 10, Ch. 121, L. 1937.]

5668.55. Fiscal agent. Any municipality shall have power in connection with the issuance of refunding bonds to appoint a fiscal agent to provide for the powers, duties and functions and compensations of such fiscal agent, to limit the liabilities of such fiscal agent to prescribe a method for the resignation, removal, merger or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent. [En. Sec. 11, Ch. 121, L. 1937.]

5668.56. Duties of municipality and officers. 1. In order that the payment of the refunding bonds, and interest thereon, shall be adequately secured, any municipality issuing refunding bonds pursuant to this act and the proper officers, agent and employees thereof, are hereby directed, and it shall be the mandatory duty of such officers, agents and employees under this act, and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) To pay or cause to be paid punctually the principal of every refunding bond, and the interest thereon, on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) To operate the enterprise in an efficient and economical manner and to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges in connection therewith as may be necessary or proper, which said fees, tolls, rates, rentals and other charges shall be at least sufficient after making due and reasonable allowances for contingencies and for a margin of error in the estimates;

(1) To pay all current expenses of operation, maintenance and repair of such enterprise, (2) to pay the interest on and principal of the refunding bonds as the same shall become due and payable, (3) to comply in all respects with the terms of the resolution or resolutions authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds, and (4) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise;

(c) To operate, maintain, preserve and keep, or cause to be operated, maintained, preserved and kept, the enterprise and every part and parcel thereof, in good repair, working order and condition;

(d) To preserve and protect the security of the refunding bonds and the rights of the holders thereof, and to warrant and defend such rights against all claims and demands of all persons whomsoever;

(e) To pay and discharge, or cause to be paid or discharged any and all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof, prior or superior to the lien of the refunding bonds, or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(f) To hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution or resolutions authorizing the issuance of the refunding bonds, or if such resolution or resolutions shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution or resolutions as modified;

(g) To keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof, and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holder or holders of not less than ten per cent of the refunding bonds then outstanding or his or their representatives duly authorized in writing.

2. None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise. [En. Sec. 12, Ch. 121, L. 1937.]

5668.57. Additional powers and duties. 1. The governing body of any municipality shall have power, in addition to the other powers conferred by this act, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) Limitations on the purpose to which the proceeds of sale of any issue of refunding bonds, or any notes, bonds or other obligations then or thereafter to be issued to finance the improving of the enterprise, may be applied;

(b) Limitations on the issuance of additional refunding bonds, or addi-

tional notes, bonds or other obligations to finance the improving of the enterprise, and on the lien thereof;

(c) Limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) The amount and kind of insurance to be maintained on the enterprise, and the use and disposition of insurance moneys;

(e) Pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) Covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the rights to which may thereafter come into existence;

(g) Events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) The rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations;

(i) The vesting in a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees, and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this act or duties imposed hereby;

(j) A procedure by which the terms of any resolution authorizing refunding bonds, or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) The execution of all instruments necessary or convenient in the exercise of the powers granted by this act or in the performance of the duties of the municipality and the officers, agents and employees thereof;

(l) Refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted, nor at any time hereafter in force, which may affect the duties or covenants of the municipality in relation to the refunding bonds, or the performance thereof, or the lien of such refunding bonds;

(m) The purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) Any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds, or as may tend to make the refunding bonds more marketable.

2. Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise. [En. Sec. 13, Ch. 121, L. 1937.]

5668.58. Right to receivership upon default. 1. In the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the municipality or the governing body or officers, agents or employees thereof shall fail or refuse to comply with the provisions of this act or shall default in any agreement made with the holders of the refunding bonds, any holder or holders of refunding bonds, or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to the district court, or any court of competent jurisdiction, for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such refunding bonds. Upon such application the district court may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such refunding bonds then outstanding, or any trustee for holders of such refunding bonds in such principal amount, shall appoint a receiver of the enterprise.

2. The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the enterprise, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenue and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

3. Whenever all that is due upon the refunding bonds, and interest thereon, and upon any other notes, bonds, or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality, the same right of the holders of the refunding bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

4. Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein

contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. [En. Sec. 14, Ch. 121, L. 1937.]

5668.59. Remedies of refunding bondholders. 1. Subject to any contractual limitations binding upon the holders of any issue or refunding bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to the specified proportion of percentage of such holders, any holder of refunding bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) By mandamus or other suit, action or proceedings at law or in equity to enforce his rights against the municipality and its governing body and any of its officers, agents and employees and to require and compel such municipality or such governing body or any such officers, agents or employees to perform and carry out its and their duties and obligations under this act and its and their covenants and agreements with bondholders;

(b) By action or suit in equity to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) Bring suit upon the refunding bonds.

2. No remedy conferred by this act upon any holder of refunding bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this act or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of refunding bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the refunding bonds, or any trustee therefor, then and in every such case the municipality and such holder or trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken. [En. Sec. 15, Ch. 121, L. 1937.]

5668.60. Construction of act. This act constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts or things by any governing body of any municipality, or any board, officer, commission, de-

partment, agency or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this act, except as may be prescribed in this act. The powers conferred by this act shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this act shall not affect, the powers conferred by any other law. This act is remedial in nature and shall be liberally construed. [En. Sec. 16, Ch. 121, L. 1937.]

CHAPTER 421-B, MUNICIPAL REVENUE BOND ACT OF 1939

5668.61. Short title of act. This act may be cited as "the municipal revenue bond act of 1939". [En. Sec. 1, Ch. 126, L. 1939.]

5668.62. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: Water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment and disposal works.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of the finances and management of a municipality. [En. Sec. 2, Ch. 126, L. 1939.]

5668.63. Additional powers of municipalities. In addition to the powers which it may now have, any municipality shall have power under this act: (a) To construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith, (b) to operate and maintain any undertaking and furnish the service, facilities and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality, (c) to issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking, (d) to prescribe and collect rates, fees, and charges for the services, facilities and commodities furnished by such undertaking, and (e) to pledge to the punctual payment of said bonds and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereof to thereafter constructed or acquired) or of any part of such undertaking, sufficient to pay said bonds, and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenue. The governing body of the municipality in determining such cost, may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this act. [En. Sec. 3, Ch. 126, L. 1939.]

5668.64. Authorization of undertaking—sale, form and contents of bonds.

The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this act, and bonds may be authorized to be issued under this act by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting at a special election noticed as provided in section 538 of the Revised Codes of Montana, 1935, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this act provided and ordered said special election. Said bonds shall bear interest at such rate or rates not exceeding five per centum per annum, payable semi-annually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolution may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the City of New York, New York, or the City of Chicago, Illinois, or the City of San Francisco, California. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this act. Said bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law. [En. Sec. 4, Ch. 126, L. 1939.]

5668.65. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this act may contain covenants as to (a) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof, (b) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves, (c) the transfer from the general funds of the municipality to the account or accounts of the undertaking, an amount equal to the cost of furnishing such municipality or any of its departments, boards or agencies with the services, facilities and/or commodities of said undertaking, (d) the issuance of other or additional bonds payable from the revenue of said undertaking, (e) the operation and maintenance of such undertaking, (f) the insurance to be carried thereon and the use and disposition of insurance moneys, (g) books of account and the inspection and audit thereof, and (h) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by

the district court, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of said undertaking, operate and maintain the same, prescribe rates, fees, or charges, subject to the approval of the public service commission of Montana and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do. The provisions of this act and any such resolution or resolutions shall be enforceable by any bondholder, by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. [En. Sec. 5, Ch. 126, L. 1939.]

5668.66. Validity of bonds. Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued. The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. [En. Sec. 6, Ch. 126, L. 1939.]

5668.67. Lien of bonds. All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have a prior and paramount lien on the revenue of the undertaking, for which said bonds have been issued, over and ahead of all bonds of any issue payable from said revenue which may be subsequently issued and over and ahead of any claims or obligations of any nature against said revenue subsequently arising or subsequently incurred. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of this act and the resolution or resolutions authorizing said bonds. [En. Sec. 7, Ch. 126, L. 1939.]

5668.68. Bonds not a general obligation of municipality. No holder or holders of any bonds issued under this act shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon. Each bond issued under this act shall recite in substance that said bond, including interest thereon, is payable from the revenue pledged to the payment thereof, and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision. [En. Sec. 8, Ch. 126, L. 1939.]

5668.69. Undertakings to be self-supporting. The governing body of a municipality issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities of such undertaking, and shall revise such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and

(b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor. [En. Sec. 9, Ch. 126, L. 1939.]

5668.70. Use of revenue. Any municipality issuing bonds pursuant to this act for the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking shall have the right to appropriate, apply or extend the revenue of such undertaking for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor, (c) to pay and discharge notes, bonds, or other obligations and interest thereon, not issued under this act for the payment of which the revenue of such undertaking is or shall have been pledged, charged or encumbered, (d) to pay and discharge notes, bonds or other obligations and interest thereon, which do not constitute a lien, charge or encumbrance on the revenue of such undertaking, which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of such undertaking, and (e) to provide a reserve for betterments to such undertaking. Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general funds. [En. Sec. 10, Ch. 126, L. 1939.]

5668.71. Consent of another municipality. No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality. [En. Sec. 11, Ch. 126, L. 1939.]

5668.72. Consent of state agencies. It shall not be necessary for any municipality proceeding under this act to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission or other like instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain and operate an undertaking, but the supervisory powers and duties of the state board of health shall continue as heretofore. [En. Sec. 12, Ch. 126, L. 1939.]

5668.73. Construction of act. The powers conferred in this act shall be in addition and supplemental to the powers conferred by any other general, special or local law. The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this act for said purposes, notwithstanding that any general, special or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law, including, but not limited to, any requirement for the approval by the voters of any municipality. Insofar as the provisions of this act are inconsistent with the provisions of any other general, special, or local law, the provisions of this act shall be controlling. [En. Sec. 13, Ch. 126, L. 1939.]

CHAPTER 421-C, CAPITOL BUILDING REFUNDING BONDS

5668.74. Capitol building refunding bonds authorized. The state board of examiners is hereby authorized and empowered to issue and sell bonds of the state of Montana, payable in lawful money of the United States, in an amount sufficient to pay, refund and redeem all capitol building bonds heretofore issued by the state of Montana and held by the state board of land commissioners as investments of trust funds under the administration of said board. The proceeds from such sale shall be deposited in the treasury of the state of Montana and credited to the "capitol building refunding bonds sinking and interest fund" and shall be used exclusively for the payment of said outstanding capitol building bonds and interest thereon. [En. Sec. 1, Ch. 133, L. 1939.]

5668.75. Interest rate—terms and form of bonds. Said bonds shall bear interest at a rate not exceeding four per centum (4%) per annum, payable semi-annually. The bonds shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe and shall be payable over such period of years, not exceeding twenty (20), that the said board of examiners may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter at the option of the state board of examiners. The said bonds shall be in such denominations and form and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, the secretary of state and the members of said board, and shall be payable at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signatures of the members of said board. [En. Sec. 2, Ch. 133, L. 1939.]

5668.76. Levy for payment of bonds and interest—income from land grant. There shall be and there is hereby levied annually upon all property in the state of Montana subject to taxation, an ad valorem tax on each dollar of the taxable valuation of such property, sufficient in amount to pay the principal and interest on said bonds as the same become due and payable, which tax when collected shall be placed by the state treasurer in a fund to be known as the "capitol building refunding bonds sinking and interest fund", and used for the payment of the principal and interest of such bonds and for no other purpose; which tax shall be computed against the different classes of taxable property on the percentage value thereof for taxation purposes as such percentage may be provided by law. All of the income from all lands granted by the congress of the United States to the state of Montana for public buildings at the state capitol shall be placed in the "capitol building refunding bonds sinking and interest fund" to be applied in payment of the principal and interest of such bonds. The state board of equalization shall hereafter and between the first and second Monday in August of each year, ascertain and determine the amount required to pay the principal and interest on said bonds becoming due during the then current fiscal year and the amount of money standing to the credit of the "capitol building refunding bonds sinking and interest fund" and applicable to the payment of interest and principal of said bonds during the then current fiscal year, and after deducting such amount from the amount required to be paid as such principal and interest during the then current fiscal year, shall cal-

culate, determine and fix a rate of tax levy sufficient to produce the balance of the amount, if any, required to pay such principal and interest becoming due and payable during the then current fiscal year. The state board of equalization shall annually and before the second Monday in August, certify such tax levy as calculated and determined by such board to the county clerks of the several counties of the state, and such county clerks shall compute such taxes and enter the same on the assessment books, and such taxes shall be collected and transmitted by the county treasurer in the same manner as other taxes for state purposes are collected and transmitted. [En. Sec. 3, Ch. 133, L. 1939.]

5668.77. Sale or exchange of bonds. The said bonds shall be sold by the state board of examiners at such time, in such manner and in such amounts as the said board shall deem for the best interests of the state in carrying out the purpose for which the issuance of the said bonds is authorized, provided that such bonds shall not be sold for less than par plus accrued interest to date of delivery of the bonds. The bonds or any part thereof may be exchanged for outstanding capitol building bonds and in such case the state board of examiners shall fix the rate of interest which the refunding bonds shall bear, not exceeding four per centum (4%) per annum, and each institution or fund holding any part of the said capitol building bonds shall receive refunding bonds equal in amount to the par value of the outstanding bonds plus the interest accrued thereon up to the date of the new bonds. If the refunding bonds are offered for sale they shall be sold at open competitive bidding. [En. Sec. 4, Ch. 133, L. 1939.]

5668.78. Registration of bonds. Each of said refunding bonds shall be registered before delivery with the state treasurer of the state of Montana who shall keep accurate accounts of payments of interest and principal upon said bonds. [En. Sec. 5, Ch. 133, L. 1939.]

CHAPTER 421-D, BONDS FOR IMPROVEMENT OF INSANE ASYLUM

5668.79. Bond issue for improvement of insane asylum authorized. That the legislative assembly of the state of Montana is hereby authorized and empowered to direct the state board of examiners to issue bonds in the name of the state of Montana in a sum not exceeding five hundred thousand dollars (\$500,000.00) in excess of the constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred or created and for which the state of Montana is now obligated, the money derived from the sale of said bonds to be used for the purpose of constructing, repairing, and equipping necessary buildings, for other permanent improvements and for acquiring necessary grounds therefor, at the Montana state insane asylum at Warm Springs, Montana. [En. Sec. 1, Ch. 168, L. 1939.]

5668.80. Time and amounts of issue. Such bonds shall be issued in series from time to time by the state board of examiners upon the direction of the legislative assembly of the state of Montana, and at such times and in such amounts as may appear to the legislative assembly of the state of Montana in the exercise of its judgment and discretion to be for the best interests of the state and necessary for the erection, repair and equipment of necessary buildings, other permanent improvements, and acquisition of necessary

grounds, at the Montana state hospital for the insane. [En. Sec. 2, Ch. 168, L. 1939.]

5668.81. Date, term, interest provisions. Each series of bonds provided for in this act shall be issued in such denominations as may be determined by the state board of examiners at the time the same are authorized to be issued under the provisions of this act, and shall bear date as of the day of issuance thereof, and shall become due and payable serially over a period of not to exceed twenty (20) years from the date of issuance, and shall bear interest at the rate of not to exceed four per centum (4%) per annum, payable semi-annually on such dates as may be determined and fixed by the state of Montana; provided, however, that for each series of said bonds issued after the issuance of a first series thereof, the board of examiners shall so fix the interest paying dates that the interest thereon will become due and payable on the same date as the interest on the first series of bonds which become due and payable, and in order so to do, the state board of examiners may provide that the first interest shall be due and payable at a date less than six (6) months after the date of the issuance of such series. [En. Sec. 3, Ch. 168, L. 1939.]

5668.82. Form of bonds. The board of examiners shall prescribe the form of such bonds and the bonds of each series shall bear upon their face the words "state insane hospital bonds of the state of Montana" with a letter or figure to designate the series thereon, and shall be signed by the members of the state board of examiners, and the great seal of the state of Montana shall be affixed to each bond and the bonds shall be registered in the office of the state treasurer. Said bonds shall have interest coupons attached thereto covering the interest due semi-annually, which coupons shall be executed with the facsimile signatures of all the members of the state board of examiners and the signing of said bonds with facsimile signatures shall be recognized as sufficient execution of said coupons on behalf of the state of Montana. [En. Sec. 4, Ch. 168, L. 1939.]

5668.83. Disposal of bonds. The bonds provided for in this act shall be disposed of by the state board of examiners in such manner as they shall deem for the best interests of the state and in carrying out the provisions of this act; provided, that no bond shall be disposed of for less than its par value. [En. Sec. 5, Ch. 168, L. 1939.]

5668.84. Use of proceeds from bonds. All moneys derived from the issuance and sale of the bonds authorized by this act shall be paid into the state treasury, and shall constitute a special fund for the construction, repair, and equipment of necessary buildings and other permanent improvements, and the acquisition of necessary grounds therefor at the state hospital for the insane at Warm Springs, Montana, and shall be expended only for the construction, repair, and equipment of necessary buildings, other permanent improvements, and the acquisition of necessary grounds therefor, at said institution, and shall be disbursed by the state treasurer on warrants properly drawn against such fund by the state auditor pursuant to the orders of the state board of examiners. [En. Sec. 6, Ch. 168, L. 1939.]

5668.85. Levy for payment of bonds. There shall be levied annually upon all property of the state of Montana subject to taxation an ad valorem

tax upon each dollar of the taxable valuation of such property sufficient to pay the interest accruing on said bonds as such interest shall fall due, and the payment of the bonds as they serially become due, said levy, however, not to exceed one-half ($\frac{1}{2}$) mill per annum. The tax when collected by the county treasurers of the several counties of the state shall be by them accounted to and paid into the state treasury of the state of Montana, and by the state treasurer placed in the "state insane hospital bond interest and redemption fund" which fund shall be used exclusively for the payment of principal and interest on said bonds as the same become due. [En. Sec. 7, Ch. 168, L. 1939.]

5668.86. Submission of question to electors. There shall be a referendum on this act and the secretary of state is hereby required, and it is made his duty to submit this measure in accordance with section 2 of article 13 of the constitution of the state of Montana and all other provisions of the constitution and laws of the state of Montana applicable thereto to the people of the state for their approval or rejection at the general election to be held in November, 1940. The official ballot used at said election shall have printed thereon the title of this act and below the same shall be printed the words:

☐

For the bond issue for state insane hospital bonds.

☐

Against the bond issue for the state insane hospital bonds.

Each elector shall designate his preference by marking an "X" in the square below the proposition for which such elector desires to vote. The votes cast for and against the law above proposed, shall be counted, returned, and canvassed, and the results shall be determined and declared in the manner provided by the general election laws of the state. [En. Sec. 8, Ch. 168, L. 1939.]

5668.87. Cost of bonds and architect. The cost of the bonds issued under this act, fees, commissions, and compensation of the architect employed in the construction and to prepare plans shall be paid out of the proceeds of the bonds. [En. Sec. 9, Ch. 168, L. 1939.]

